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10

11   UNITED STATES DISTRICT COURT

12   NORTHERN DISTRICT OF CALIFORNIA

13 NEO4J, INC., a Delaware corporation, and   CASE NO. 5:18-cv-07182-EJD
    NEO4J SWEDEN AB, a Swedish
14 corporation,   **NOTICE OF ERRATA FOR EXHIBIT 31
                                                       TO THE DECLARATION OF JEFFREY
15   Plaintiffs,   M. RATINOFF IN SUPPORT OF
                                                       PLAINTIFFS' CONSOLIDATED MOTION
16   v.   FOR SUMMARY JUDGMENT**

17 PURETHINK LLC, a Delaware limited   Date: March 25, 2021
    liability company, IGOV INC., a Virginia   Time: 9:00 a.m.
18 corporation, and JOHN MARK SUHY, an   Dept.:   Courtroom 4, 5th Floor
    individual,   Judge: Hon. Edward J. Davila
19   Defendants.

20 AND RELATED COUNTERCLAIM.

21   CASE NO. 5:19-CV-06226-EJD

22 NEO4J, INC., a Delaware corporation, and
    NEO4J SWEDEN AB, a Swedish
23 corporation,

24   Plaintiffs,

25   v.

26 GRAPH FOUNDATION, INC., an Ohio
    corporation, GRAPHGRID, INC., an Ohio
27 corporation, and ATOMRAIN INC., a
    Nevada corporation,
28   Defendants.

HOPKINS & CARLEY
ATTORNEYS AT LAW
SAN JOSE ♦ PALO ALTO

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NOTICE OF ERRATA FOR EXHIBIT 31 TO THE DECLARATION OF JEFFREY M. RATINOFF IN SUPPORT OF PLAINTIFFS'
CONSOLIDATED MOTION FOR SUMMARY JUDGMENT; CASE NOS. 5:18-CV-07182-EJD AND 5:19-CV-06226-EJD

1   Plaintiffs and Counter-Defendants Neo4j, Inc. and Neo4j Sweden AB ("Plaintiffs")

2   respectfully submit the attached corrected **Exhibit 31** to the Declaration of Jeffrey M. Ratinoff in

3   Support of Plaintiffs' Consolidated Motion for Summary Judgment ("Ratinoff Declaration") filed

4   on December 11, 2020. *See* PT Dkt. No. 98-1 at ¶ 33; GFI Dkt. No. 93-1 at ¶ 33. The original

5   Exhibit 31 to the Ratinoff Declaration inadvertently omitted certain pages to the Rule 30(b)(6)

6   Deposition of Graph Foundation, Inc. that were cited in Plaintiffs' moving papers and Separate

7   Statement of Material Undisputed Facts. The corrected Exhibit 31 to the Ratinoff Declaration

8   includes these pages.

9   Dated: January 19, 2021   HOPKINS & CARLEY
                                                                  A Law Corporation
10

11

12   By: */s/ Jeffrey M. Ratinoff*
                                                                      Jeffrey M. Ratinoff
13   Attorneys for Plaintiff and Counter-
                                                                      Defendants
14   NEO4J, INC. and NEO4J SWEDEN AB

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NOTICE OF ERRATA FOR EXHIBIT 31 TO THE DECLARATION OF JEFFREY M. RATINOFF IN SUPPORT OF PLAINTIFFS'
CONSOLIDATED MOTION FOR SUMMARY JUDGMENT; CASE NOS. 5:18-CV-07182-EJD AND 5:19-CV-06226-EJD

CORRECTED EXHIBIT 31 TO DECLARATION OF JEFFREY M. RATINOFF IN SUPPORT OF PLAINTIFFS' CONSOLIDATED MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NEO4J, INC., a Delaware corporation, and NEO4J SWEDEN AB, a Swedish corporation,	) CASE NO.) 5:19-CV-06226-EJD))
Plaintiffs,	))
vs.	))
GRAPH FOUNDATION, INC., an Ohio corporation, GRAPHGRID, INC., an Ohio corporation, and ATOMRAIN INC., a Nevada corporation,	)))))
Defendants.	))

REMOTE VIA ZOOM

30(b)(6) DEPOSITION OF NEO4J INC

BY BRAD NUSSBAUM

_____

9:17 A.M. PDT

FRIDAY, OCTOBER 16, 2020

_____

By: Denise Myers Byrd, CSR 8340, RPR

1

1   data structures. I don't have a ton of formal training.

2   Q. So you consider yourself more self taught?

3   A. You know, with a strong engineering background,

4   but, yeah, I mean, I can't take all the credit for just

5   teaching myself. There's a lot of it that, you know,

6   I've learned through the years just developing.

7   Q. Where did you do your engineering studies?

8   A. University of Southern California.

9   Q. But you didn't graduate from USC?

10   A. No.

11   Q. How many years did you attend?

12   A. I can't remember if it was just one or one and

13   a half. I did two years of community college at Santa

14   Monica prior to transferring, so I transferred my junior

15   year, completed that, and then the recession hit the

16   following year and then I think I started working and

17   didn't go back. So, yeah, it would have just been one

18   year at USC and two years prior.

19   Q. You mentioned the recession so that was right

20   around 2008?

21   A. That's right, yeah. I think my first year was

22   '08-'-9 or '09-'10 -- no, it was '08-'09 as a junior.

23   Yeah, '08-'09 was my junior year.

24   Q. Where did you start working? You mentioned you

25   did go back to school.

22

1   A.   Well, Ben and I founded AtomRain March of '09

2   so that's kind of when I moved into the software world

3   and we started a business together.

4   Am I getting into too many personal things here

5   for GFI? Like relevance? I don't know if I am, but I'm

6   not sure how much you want to personally ask me about my

7   life. If I'm getting too personal, just let me know.

8   Q.   That's okay. We just need to know sort of your

9   level of understanding of things. That's all we're

10 doing.

11   A.   Okay. Okay.

12   Q.   If your counsel thinks we're going too far

13 afield, he'll jump in.

14   A.   Okay.

15   Q.   You mentioned AtomRain. Is that AtomRain Inc.

16 or AtomRain LLC that you formed?

17   A.   Initially it was AtomRain Inc.

18   Q.   Are you aware --

19   MR. PERNICK: I do want to keep this with

20 respect to Mr. Nussbaum being the witness for GFI.

21 AtomRain isn't here; AtomRain is not the witness. I

22 understood the inquiries into his technical background,

23 but I thought we were moving on to Topic Number 1 with

24 respect to formation.

25   MR. RATINOFF: All right, that's fair. We'll

                                                        23

1   maybe touch on a few things later when Jeff gets on

2   board.

3   BY MR. RATINOFF:

4   Q.   Okay. Let me go ahead and move on to Topic 1

5   on the formation of Graph Foundation.

6   Do you recall when you formed Graph Foundation

7   or when -- let me strike that.

8   When was Graph Foundation founded?

9   A.   Yeah, I think I looked this up, and I'm pretty

10 sure we have it everywhere as June 2018. I can pull up

11 the exact incorporation document.

12   Q.   I'll do that, actually. Thank you, though. I

13 appreciate that.

14   A.   All right. I have some of these in front of me

15 because, honestly, I'm not going to remember this stuff

16 exactly.

17   Q.   Well, that's -- I'm going to ask you questions.

18 If you don't remember --

19   A.   Yeah, I have effective June 21, 2018.

20   Q.   Okay. And so I just put up Tab 2 so we'll mark

21 that as Exhibit 3.

22   (WHEREUPON, Exhibit 3 was marked for

23   identification.)

24 BY MR. RATINOFF:

25   Q.   Why don't you take a quick look at that time

24

1 and let me know if that's what you had in mind as the

2 founding document.

3   A.   Seems to be pretty big. It's taking a while.

4 If it says State of Ohio corporate registration,

5 that's --

6   Q.   It's actually -- the title of the document

7 should be in your chat as Tab 2. It's the Articles of

8 Incorporation of Graph Foundation Inc.

9   Do you see that?

10   A.   Oh, okay. Yeah, okay. So 22nd of June, okay.

11 So I guess my State of Ohio certificate is June 21st and

12 this is signed June 22nd. I'm not exactly sure which

13 one.

14   Q.   You recognize the document?

15   A.   Yes. Yeah, this is what our lawyer here in

16 Ohio drafted.

17   Q.   And then what's -- the signature page -- I

18 think it's the third page -- you see there's two

19 signatures there?

20   A.   Yes.

21   Q.   The date?

22   A.   My signature and Ben's signature, yeah.

23   Q.   Okay. All right. Thank you.

24   Leading up to the formation, did you have any

25 discussions with anybody about forming Graph Foundation,

25

1   Q.   I'm just asking yes or no.

2   Did you talk to Mr. Suhy about forming Graph

3   Foundation prior to forming Graph Foundation?

4   A.   I mean, I guess it feels vague to me because

5   forming is a very vague word. So he was -- so to answer

6   specifically, we did not consult him about how to

7   structure the foundation as a nonprofit with any of

8   these articles here; that came just from our lawyer. We

9   did not consult him about any of the mission. So when

10   we filed for a nonprofit status with the IRS and we

11   posted a mission and what we were about, we did not

12   consult him about any of those things. So he was not

13   consulted, I guess, in any material way about, like,

14   what you could call the actual formation of the corp.

15   Q.   Who -- what led you to form Graph Foundation?

16   Strike that.

17   When did you come up with the idea to form

18   Graph Foundation?

19   A.   Must have been, like, early 2018, maybe late

20   2017, but probably early 2018.

21   Q.   Whose idea was it to form Graph Foundation?

22   A.   Primarily mine, but Ben was also very on board

23   with it.

24   Q.   Why did you decide to form Graph Foundation?

25   A.   I think we see a strong need for graph

                                                            27

1   technology to be open and available to a broader

2   community. I think that we both, you know, sort of come

3   up through a lot of the open source world where, you

4   know, the Linux Foundations, the Apache Foundations, the

5   Free Software Foundations of the world have sort of

6   shaped and enabled everybody to do really great things.

7   And I think being in the graph space we see, you know,

8   just the potential for greater work to be done by having

9   technology that's developed and opened collaboratively.

10   I think that's what led us to write the mission

11   statement that we did about generally making graph

12   technology available. We see a lot of avenues where

13   that can be applied.

14   Q. Was there a specific graph technology that you

15   had in mind?

16   A. I think generally, you know, there's a lot of

17   years to be played out, so, you know, Ben and I see that

18   there are many different technologies, graph

19   technologies that this may be applicable to. I think we

20   listed several in our mission statement.

21   But, you know, there's certainly areas in data

22   processing and algorithms in -- you know, especially in

23   AI. There's a lot of capabilities that I think we see

24   graph having a big impact, and so we see the foundation

25   as being a place that, you know, may one day be able to

28

1   provide an overall benefit to humanity through those

2   things.

3   Q. Was Neo4j the primary driver for forming Graph

4   Foundation?

5   A. Neo4j was definitely one driver. We see an

6   open source database, certainly something that can store

7   data as a graph, as being a key part and it's definitely

8   where we put a lot of our time and effort in the early

9   days.

10   Q. And did you discuss with Mr. Suhy about forming

11   Graph Foundation to promote open source Neo4j?

12   MR. PERNICK: Objection; vague as to time.

13   BY MR. RATINOFF:

14   Q. Prior to the formation of Graph Foundation.

15   A. I mean, discuss is a very broad word so could

16   you be more specific?

17   Q. Did you talk to Mr. Suhy within three months of

18   forming Graph Foundation about forming Graph Foundation?

19   A. I mean, there must have been some conversations

20   about it, but I don't really think he was very -- I'm

21   not really sure what he offered, if anything, toward

22   like the overall -- I don't think he offered anything in

23   the discussions. I don't remember him really having

24   much of a drive on the open source side. I remember

25   him -- you know, he's very practical when it comes to

29

```
 1    business, so I think the foundation has always just

 2    been, you know, really for me and Ben to decide on.

 3              MR. RATINOFF:  I would like to upload a

 4    document.  This is going to be Tab 4.

 5              (WHEREUPON, Exhibit 4 was marked for

 6         identification.)

 7    BY MR. RATINOFF:

 8         Q.   Let me know when that's up on your chat.

 9              Do you see this document that I put up?  It

10    should be an email from John Mark Suhy dated

11    May 5th -- I'm sorry -- May 21, 2018.  Do you see that?

12         A.   Yeah.

13         Q.   "Subject:  Quick Notes on fork."

14         A.   Yeah, I see it.

15         Q.   And looking at the "to" line, there's a Brad

16    Nussbaum, brad@atomrain.com.  Do you see that email

17    address?

18         A.   Yep.  Yep.

19         Q.   Is that an email address that you use

20    currently?

21         A.   Yes.

22         Q.   And were you using that email address back in

23    2018, in May?

24         A.   Yes.

25         Q.   And the other address, Benjamin Nussbaum,
```

                                                          30

1   that's your brother Ben?

2   A.   Yes.

3   Q.   And that's his email address, ben@atomrain.com?

4   A.   Yes.

5   Q.   Prior to forming Graph Foundation, when you

6   were in the preformation stage, were you using your

7   AtomRain account to communicate about forming Graph

8   Foundation?

9   A.   We've -- we've spoken with John Mark with our

10   AtomRain accounts.

11   Q.   So the answer is --

12   A.   I don't know if it's --

13   Q.   Sometimes I'm asking very simple yes-or-no

14   questions, and I appreciate you wanting to elaborate,

15   but I think it will go a lot smoother if you just answer

16   my questions as they're asked. I'm going to ask it one

17   more time.

18   Did you use your AtomRain email address to

19   discuss forming Graph Foundation with John Mark?

20   A.   You're saying like prior to us ever having a

21   Graph Foundation email?

22   Q.   Yes.

23   A.   I mean, prior to having a Graph Foundation

24   email and prior to Graph Foundation existing, John Mark

25   and, you know, Ben and I communicated with our AtomRain

                                                          31

1   emails as the main form, I would say.

2   Q. At this time in May of 2018, were you an

3   employee of AtomRain?

4   A. Yes.

5   Q. And what was your -- what was your position at

6   AtomRain at that time?

7   A. I was the CEO.

8   Q. Do you still hold that position at AtomRain?

9   A. Yes.

10   Q. And was Ben also an employee of AtomRain at

11   that time in May 2018?

12   A. Yes.

13   Q. What was his role at that time?

14   A. He's the CTO.

15   Q. And is he still the CTO?

16   A. Yes.

17   Q. Were you also employed by anyone else at that

18   time besides AtomRain in May of 2018?

19   A. No.

20   Q. Okay. Turning back to this email, which I

21   believe would be Exhibit 4.

22   MR. RATINOFF: Mark this as Exhibit 4. It's

23   got the Bates number IGOV0001570192, and I'll represent

24   this is produced by iGov in the related litigation. It

25   was not produced by your attorney.

32

1   reference in this email?

2   A.   In reference in this email, I don't know.

3   Q.   Do you know who GraphGrid is?

4   A.   Yes. GraphGrid is a company that I founded

5   along with my brother.

6   Q.   And was it founded prior to this email in May

7   of 2018?

8   A.   GraphGrid was a product that was in AtomRain

9   that has been known and around for -- well, since 2015.

10   We spun it out of AtomRain. I don't -- that's getting

11   into I don't know if it's GFI specific stuff right now,

12   but, yeah, there's a formation date for GraphGrid

13   that's -- I think we spun it out sometime in 2018.

14   Q.   Okay. Moving on down to the next paragraph

15   where Mr. Suhy says:

16   "Just something to think about, I

17   could literally reach out to MariaDB.org

18   and ask them if they can give you a copy

19   of their bylaws."

20   Do you see that?

21   A.   Yes.

22   Q.   Did Mr. Suhy to your knowledge reach out to

23   MariaDB and obtain the bylaws?

24   A.   No.

25   Q.   Do you know what MariaDB is?

35

1   A.   No.

2   Q.   And Greystone Group did not contribute anything

3   to Graph Foundation?

4   A.   No.

5   Q.   And Tylor Data Services didn't contribute

6   anything to Graph Foundation?

7   A.   They did not contribute.

8   Q.   Why were they put on the website?

9   A.   I think there were discussions being held at

10   the time, probably at the time this was developed, that

11   maybe were forward-looking. You know, sometimes when

12   sites are developed, there's forward-looking thinking

13   and things are just in motion because a lot of stuff was

14   in motion. So it probably got on here optimistically

15   and then it didn't really pan out and so they were later

16   removed to clean it up.

17   Q.   Okay. Thank you.

18   So another thing we talked about before break

19   was you had mentioned that GraphGrid had been spun off

20   from AtomRain and you weren't sure about the date, I

21   believe. Is that correct? Strike that.

22   You believe it was sometime in 2018 that

23   GraphGrid was spun off from AtomRain.

24   A.   Yeah, sometime in 2018. Yes, sometime in 2018.

25   ///

                                                              57

1   (WHEREUPON, Exhibit 8 was marked for

2   identification.)

3   BY MR. RATINOFF:

4   Q.   Sorry, I'm going to drop another document here.

5   It doesn't have a tab number. This should be GraphGrid

6   Articles of Incorporation.

7   A.   I have it.

8   Q.   And I'll represent to you I just printed this

9   off of the Ohio Secretary of State's office as the State

10   of Ohio Certificate. Do you see where I'm looking?

11   A.   Yeah. It's -- it's from our law firm and it

12   looks right, so I have no reason to believe this isn't

13   our certificate.

14   Q.   And the effective date is, you can see there on

15   the first page, April 25, 2018?

16   A.   Okay.

17   Q.   Does that sound right?

18   A.   That sounds -- that sounds very right, yeah.

19   Q.   So GraphGrid Inc. was incorporated prior to

20   Graph Foundation being incorporated, correct?

21   A.   Yes.

22   MR. RATINOFF: I'm going to drop the next

23   document -- oh, by the way, I would like to mark that

24   Articles of Incorporation as Exhibit 8.

25   ///

58

1   A.   So no.

2   Q.   Does Graph Foundation share office space with

3   another entity?

4   MR. PERNICK: Objection; vague.

5   THE WITNESS: Can you be specific about what

6   you mean by share.

7   BY MR. RATINOFF:

8   Q.   Does Graph Foundation have an office, a

9   physical office?

10   MR. PERNICK: Objection; vague.

11   BY MR. RATINOFF:

12   Q.   Does Graph Foundation have a physical office

13   where it conducts its business?

14   MR. PERNICK: Objection; vague.

15   BY MR. RATINOFF:

16   Q.   You can answer the question.

17   A.   I'm not sure how to answer the question.

18   Q.   Where does Graph Foundation conduct its

19   business?

20   A.   Graph Foundation uses 111 South Buckeye Street

21   for receiving mail and other important documents.

22   Otherwise it is a remote-working organization.

23   Q.   Is that a P.O. Box, 111 Buckeye Street?

24   A.   It is an office location that receives -- that

25   has a box to receive mail.

65

1   Q.   Are there any other businesses located at

2   111 -- I'm sorry -- 111 Buckeye Street?

3   A.   There are.

4   Q.   And what are those other businesses?

5   A.   To Graph Foundation's knowledge, AtomRain and

6   GraphGrid both use 111 Buckeye Street for business

7   activities.

8   Q.   And are you aware of one of those entities

9   leasing that office space?

10   A.   Yes.

11   Q.   Which entity leases the office space?

12   A.   To our knowledge, AtomRain Inc.

13   Q.   And does Graph Foundation conduct business out

14   of that office space?

15   A.   Graph Foundation would receive mail but

16   otherwise has no presence. To operate, Graph Foundation

17   needs a place to receive mail. I think that's about it.

18   Q.   You mentioned Graph Foundation is a

19   virtual -- or conducts its business virtually.

20   MR. PERNICK: Objection; misstates testimony.

21   I believe he said remotely.

22   THE WITNESS: Remotely.

23   MR. RATINOFF: Okay, John, you can object, but

24   speaking objections --

25   MR. PERNICK: I was just trying to help things

66

1   along, Jeff.

2   THE WITNESS: Graph Foundation conducts its

3   business remotely.

4   BY MR. RATINOFF:

5   Q. And you use a computer to conduct business

6   remotely for Graph Foundation?

7   A. Yes.

8   Q. And what computer do you use to conduct

9   business for Graph Foundation remotely?

10   A. A MacBook Pro.

11   Q. And who owns the MacBook Pro?

12   A. Me personally.

13   Q. And do you use that computer to conduct

14   business for AtomRain as well?

15   A. I use my MacBook for a lot of things.

16   Q. Okay, that's not my question.

17   The question is do you use your MacBook Pro to

18   conduct business for AtomRain?

19   A. Yes.

20   Q. And do you use your MacBook Pro to conduct

21   business for GraphGrid?

22   A. Yes.

23   Q. And do you have access to your GraphGrid email

24   account on that laptop?

25   A. Yes.

67

1   Q.   Do you have access to your AtomRain email on

2   that laptop?

3   A.   Yes.

4   Q.   And do you have access to your Graph Foundation

5   email on that laptop?

6   A.   Yes.

7   Q.   Thank you.

8   Are you aware of any other computers that are

9   used for Graph Foundation business?

10   A.   No.

11   Q.   Does Ben have a laptop or computer issued from

12   Graph Foundation?

13   A.   No.

14   Q.   What computer does Ben use to conduct business

15   for Graph Foundation?

16   A.   His MacBook.

17   Q.   And does he also use that MacBook to conduct

18   business for AtomRain?

19   A.   Yes.

20   Q.   And does he also use that MacBook to conduct

21   business for GraphGrid?

22   A.   Yes.

23   Q.   And did you personally purchase your laptop,

24   your MacBook Pro?

25   A.   What do you mean by personally?

68

1   Q.   Did you use your own money to pay for the

2   MacBook Pro, personal funds?

3   A.   Which MacBook Pro? The one at the time this

4   started or the one that I have now?

5   Q.   Oh, so you've had more than one MacBook Pro?

6   A.   We -- you know, I get upgrades. The one that I

7   have now, no, I did not purchase.

8   Q.   Who purchased the MacBook Pro you're currently

9   using?

10   A.   AtomRain Inc.

11   Q.   When did that laptop get purchased?

12   A.   Just like a month or so ago.

13   Q.   And what happened --

14   A.   Oh, no. Yeah, yeah, maybe two months ago. A

15   month or two ago.

16   Q.   What computer were you using prior to your

17   current MacBook Pro?

18   A.   Another MacBook Pro.

19   Q.   What happened to that MacBook Pro, the prior

20   one?

21   A.   Nothing. I mean, it was just -- I upgraded.

22   Q.   Do you still have that prior MacBook Pro?

23   A.   Yeah, it's around.

24   Q.   Did you use any other computers since Graph

25   Foundation was formed to conduct Graph Foundation

69

1   business?

2   A.   No.

3   Q.   Just the two MacBook Pros you talked about?

4   A.   Just the two.

5   Q.   And the first one you had, who purchased that

6   for you?

7   A.   I don't remember. It was either -- depending

8   on where the business was at the time, it was either me

9   or it was the company. I forget.

10   Q.   The company being AtomRain?

11   A.   Yeah.

12   Q.   And has your brother used any other computers

13   besides the MacBook Pro you mentioned to conduct Graph

14   Foundation business?

15   A.   I don't think so. I think he's on the same

16   one.

17   Q.   Okay. So going back and looking at this

18   balance sheet that we were just reviewing, at the same

19   spot -- I believe my screen share should still be on.

20   A.   Yes.

21   Q.   So looking at the donations, you'll see the

22   last page I believe -- sorry.

23   Under Chase checking account, you see last

24   funds transfer from AtomRain and 3/26/2020?

25   A.   Okay, yes.

70

1   accurate.

2   Q.   Looking at the blue section, it says JMSuhy

3   initial commit. Do you see that?

4   A.   Yes.

5   Q.   And do you know -- do you understand who

6   JM Suhy is?

7   A.   Yes.

8   Q.   And who is JM Suhy?

9   A.   To my knowledge, that's John Mark's user on

10   GitHub.

11   Q.   And you see there's a date there on August 29,

12   2018?

13   A.   August, yeah, 29, yeah.

14   Q.   So is it fair to say that Graph Foundation had

15   a GitHub account as of August 29, 2018?

16   A.   Well, yeah, I think that's how those commits

17   are tracked. There's a difference between the actual

18   commit that goes to get repo and what shows up in

19   GitHub, but I think that date is when it's actually

20   merged into GitHub.

21   Q.   But in order to be merged in the Graph

22   Foundation's GitHub, Graph Foundation would have to have

23   a GitHub account, correct?

24   A.   Right. Yeah.

25   Q.   All right. And does this at all refresh your

81

1   What specifically are you looking for?

2   Q.   Well, did he start up the ONgDB fork on

3   GitHub's repository?

4   A.   Well, if what we're looking at here, Neo4j-OE

5   or something, that's not the ONgDB fork. This doesn't

6   look like much of anything. I don't even think there's

7   about more than seven files here. I'm pretty sure ONgDB

8   is well over a million.

9   Q.   Okay, let's go ahead and move on, then.

10   MR. RATINOFF: All right. I'm going to drop

11   another. It should be Tab 46, and this should be

12   Exhibit 14.

13   (WHEREUPON, Exhibit 14 was marked for

14   identification.)

15   BY MR. RATINOFF:

16   Q.   We'll mark this Exhibit 14. And the Bates

17   number starting with GFI000287 which was produced by

18   your counsel.

19   Do you have the document in front of you,

20   Exhibit 14?

21   A.   Yes.

22   Q.   Looking at Exhibit 14, there's an HTML address.

23   You have to hover your cursor over it, but if you -- it

24   says Graph Foundation admin. When you hover over that,

25   it should say admin@graphfoundation.org.

1   A.   Uh-huh. Yeah.

2   Q.   That's a Graph Foundation email that Graph

3   Foundation owns?

4   A.   Correct. Yes.

5   Q.   Does Graph Foundation still use that email

6   address?

7   A.   Yes.

8   Q.   And you searched for documents in this case in

9   that email account?

10   A.   Yes.

11   Q.   So looking at the date of this email, it says

12   July 16, 2018. Do you see that?

13   A.   Yes.

14   Q.   Does that help refresh your recollection as to

15   whether Graph Foundation had their own ONgDB up on

16   GitHub at that time?

17   A.   Did we?

18   Q.   I'm asking you.

19   A.   I don't think this gives me anything to

20   refresh. Sorry, what do you mean by get up on GitHub?

21   You mean like does this help establish a date point in

22   time when the ONgDB repository was created?

23   Q.   Yes.

24   A.   No, this would not do that.

25   Q.   All right. Let's go to the bottom, looking at

84

1   Q. It's fair to say it says forwarded message, so

2   this is forwarded from iGov to Graph Foundation?

3   A. Right.

4   Q. Do you have an understanding of why it was

5   forwarded to Graph Foundation?

6   A. They must have felt we could better answer or

7   give better details than they could.

8   Q. About GraphStack?

9   A. I'm assuming about the state of, like, an

10   open source version of Neo. It looks like they want to

11   get information like -- it looks like they're

12   redirecting them to the root source of, like, how to

13   best get involved with the open source project.

14   Q. Okay. So then looking at the first paragraph

15   of the top email, that's the July 16, 2018, email, it

16   says:

17   "I received your question from

18   iGov. We're consolidating support of

19   the open source Neo4j graph database

20   distributions under a nonprofit

21   organization: Graph Foundation."

22   Do you see that?

23   A. Right. Yes.

24   Q. And then the next paragraph, "I can help you

25   answer your questions." And then I want you to take a

87

1   look at the following paragraph that says:

2   "The naming you'll see for the

3   build on the foundation site is ONgDB.

4   This is a fully AGPL fork of the open

5   source Neo4J GitHub repository with

6   all restrictive marks from Neo4j Inc.

7   removed."

8   Do you see that?

9   A.   Yes.

10   Q.   So at this point is Graph Foundation saying

11   that there's a fork of Neo4j called ONgDB available as

12   of July 16, 2018?

13   A.   I'm not sure what the state was on this site

14   then that we were directing them to. It would seem that

15   there was something there. I don't know what the state

16   was. Maybe we had pre-built -- there was a point in

17   time where we were -- I don't know, I don't know when

18   that was. Yeah, I don't know. There must be something

19   up there for him then. I'm not sure what was up there.

20   Q.   What do you mean by this is a fully AGPL fork

21   of the open source Neo4j GitHub repository with all

22   restrictive marks from Neo4j removed?

23   A.   I think it was, like, in January or March 2018

24   when the Commons Clause came in to, like, 3.4, something

25   like that. I don't know the exact date. So I think

88

1   this is when some of the Commons Clause stuff was going

2   on. So I think all -- all that would mean by

3   restrictive marks is that we were conveying the

4   open source code as the pure open source under AGPL.

5   Q.   So with an AGPL license without the

6   Commons Clause?

7   A.   Right. Yeah. Because I think we -- yeah, we

8   had removed the Commons Clause I think at this point.

9   Q.   Is that what you're saying in the next

10   sentence?

11   "We've taken the necessary steps

12   to make sure we keep the repository

13   fully AGPL which is the license that

14   Neo4j has released it under, but then

15   added additional sections to the AGPL

16   license."

17   Are you referring to the Commons Clause there?

18   A.   Yeah, we're referring to Neo4j Inc. adding the

19   Commons Clause in to the AGPL license, yeah.

20   Q.   It says:

21   "Which in our conversations with

22   FSF (Free Software Foundation) is not

23   legal to do when using the AGPL

24   license."

25   Do you see that?

89

1   A.   Yeah. I think our understanding of this, you

2 know --

3   Q.   I'm just asking you --

4   A.   -- has evolved since then, but, yeah, I see

5 this. I see this, yeah.

6   Q.   So as of July 16, 2018, had you had any

7 conversations with the Free Software Foundation

8 regarding Neo4j adding the Commons Clause to AGPL?

9   A.   We did not, no, not the Graph Foundation.

10   Q.   Did you personally have any conversations with

11 the Free Software Foundation whether it was legal for

12 Neo4j to add the Commons Clause to the AGPL?

13   A.   No. I think I saw a conversation about it, but

14 we did not.

15   Q.   Saw, what do you mean by saw a conversation?

16   A.   I think I saw an email about a conversation.

17 I'm not sure how I saw that.

18   Q.   You don't remember who that email was from?

19   A.   I remember there was a conversation. I'm not

20 sure what we were telling them, though. I never spoke

21 to the Free Software Foundation direct.

22   Q.   Have you ever spoken to the Free Software

23 Foundation about whether Neo4j was able to add the

24 Commons Clause, quote, unquote, legally?

25   A.   I have not, no.

90

1   (WHEREUPON, Exhibit 15 was marked for

2   identification.)

3   BY MR. RATINOFF:

4   Q.   So we'll mark this document which was produced

5   by iGov. Do you have what's Tab 56 in front of you?

6   A.   Yes.

7   Q.   Okay. And so we'll call this Exhibit 15 now.

8   It's got the Bates number IGOV0001570185.001 on the

9   first page. So again, this is dated May 22, 2018. I

10   think that was around the same time we looked at that

11   earlier email and you had mentioned that Graph

12   Foundation wasn't in existence yet officially, correct?

13   A.   Sorry, that was too much. What are you asking?

14   Q.   You see the date May 22, 2018?

15   A.   Yes.

16   Q.   So you didn't have a Graph Foundation email at

17   this point, right?

18   A.   I don't think Graph Foundation was formed so

19   definitely no.

20   Q.   And we looked at a prior email where you were

21   discussing forming Graph Foundation, correct, around

22   this time?

23   A.   I would say I don't think --

24   MR. PERNICK: Objection, misstates testimony.

25   THE WITNESS: I don't think we were doing that.

97

 1   I don't think that's quite the right way to say that.

 2   MR. RATINOFF: Well, let's go back to -- I know

 3   your counsel made an objection, and just make sure you

 4   let me finish my question, give like a slight pause, let

 5   Mr. Pernick have a chance to object if he needs to.

 6   MR. PERNICK: Especially since I generally have

 7   to press my unmute button so it takes a little bit

 8   longer.

 9   The objection is misstates testimony.

10   MR. RATINOFF: I'm going to strike the

11   testimony -- there was a lot of talk over -- so I'll

12   start over again. In case he wants to object, just give

13   him a second.

14   JOHN PICONE: Jeff -- Mr. Pernick, if you have

15   your spacebar, if you press it, it will unmute

16   temporarily. I found that's an effective method.

17   MR. PERNICK: I wasn't able to get that to work

18   in our test run, but it is working now.

19   JOHN PICONE: As long as your cursor is on the

20   Zoom application it will work.

21   MR. PERNICK: Thank you.

22   MR. RATINOFF: Technology is great.

23   BY MR. RATINOFF:

24   Q. Let's look again -- I think we looked at this

25   email address before, brad@atomrain.com. That's your

1   email address, right?

2   A.   Yes.

3   Q.   You have no reason to believe you didn't

4   receive this email?

5   A.   No. I received it, yeah.

6   Q.   And looking over this email, is this the email

7   you referenced from -- maybe seen from John Mark

8   earlier?

9   A.   It sounds about right. This seems like an

10   email that came from Free Software Foundation discussing

11   this topic, yes. I forget what they said, but yes.

12   Q.   Do you see anywhere in here where Free Software

13   Foundation's giving legal advice to Mr. Suhy?

14   A.   I think my view on that was that they -- I

15   think they didn't -- I don't think they could give us

16   legal advice or I don't think they said it was legal

17   advice. I think it was, like, an opinion. So I

18   don't -- you know, giving legal advice is not something

19   that they would do so I don't think that makes sense,

20   but I don't see what they're saying here. I would have

21   to read it.

22   Q.   Okay. Well, why don't you go ahead and do

23   that.

24   A.   I think they're giving us advice on the further

25   restrictions clause in Section 7, and I think they're

99

1   that I ever saw. I think there was only ever one.

2   MR. PERNICK: Jeff, we've been going for about

3   an hour and a half. Can we take a brief five-minute

4   break.

5   MR. RATINOFF: Sure. Let me show one more

6   document.

7   MR. PERNICK: Okay, no problem. Nothing dire.

8   MR. RATINOFF: Thank you for the reminder,

9   though.

10   (WHEREUPON, Exhibit 16 was marked for

11   identification.)

12   BY MR. RATINOFF:

13   Q. Do you have that in front of you? So this

14   would be the document produced by iGov, Bates number

15   IGOV0001570125.001, and this is Exhibit 16.

16   And do you recognize this email?

17   A. Yes.

18   Q. So you've seen this email before?

19   A. I'm sorry. I thought you meant do I know

20   what's in front of me. You're asking if I -- I'm sorry.

21   What are you asking me?

22   Q. I'm asking whether you've seen this email

23   before.

24   A. This looks like a conversation happening with

25   the Free Software Foundation by John Mark.

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1   Q.   And this is the same Donald Robertson that we

2   saw to your knowledge in the last email that we were

3   looking at?

4   A.   Yeah, it looks like it.

5   Q.   And then -- but you don't know -- you don't

6   know whether you've seen this email or not, before or

7   not?

8   A.   This may have been, like, one of the other

9   emails I mentioned; like, it was probably forwarded to

10 me at one point, but I don't know. I'd have to go find

11 it.

12   Q.   Okay. Maybe we'll have you do that after the

13 deposition. But for the time being, we have this email

14 from the Free Software Foundation to John Mark which you

15 see here.

16   Looking at first where it says "snip" under

17 June 20th, do you see that?

18   A.   Yes, uh-huh.

19   Q.   "1) As the copyright holder,

20   is Neo4j Inc. allowed to add the

21   specific additional terms mentioned

22   above to the license.txt file

23   (containing the AGPL license terms)

24   and enforce these new additions?"

25   Do you see is that?

109

1   Q.   Yeah.

2   A.   I mean, I guess because our goal is to make

3   ONgDB available publicly, so 3.5 was the next version.

4   Q.   And that's because Neo4j released its

5   Version 3.5?

6   A.   Are you asking a question about our versioning?

7   Q.   Well, is there a significant difference between

8   version -- I'm sorry -- Neo4j 3.4 and 3.5?

9   A.   I mean, there are definitely differences.

10   MR. RATINOFF: Okay. I'm going to put Tab 13

11   back up. So this will be Exhibit 18.

12   (WHEREUPON, Exhibit 18 was marked for

13   identification.)

14   BY MR. RATINOFF:

15   Q.   Do you have Tab 13 up on your screen?

16   A.   Yes, I have it up.

17   Q.   And this again was produced with the Bates

18   number N4J_018661. It was printed out from the

19   internet, from Twitter's website, on 5/20/2020.

20   This is, again, I believe Graph Foundation's

21   Twitter account, correct?

22   A.   Yes, this is our Twitter account.

23   Q.   Do you have any reason to believe these tweets

24   that are included in this document are accurate as far

25   as being from Graph Foundation's account?

137

1   A.   They look accurate to me.

2   Q.   Do you see the first tweet right here at the

3   top? It says:

4   "It's official: #Neo4j

5   Enterprise is closed source. As of

6   November 2, 2018, Neo4j Inc. has

7   moved all enterprise modules of the

8   3.5 release to a private repository."

9   A.   Yep.

10   Q.   Do you see that?

11   A.   I see that.

12   Q.   What did that mean?

13   A.   I think exactly what it says.

14   Q.   Why did Graph Foundation tweet that?

15   A.   I think it's a factual statement. Enterprise

16   is closed source. I think that's true. There were

17   commits that I know that I reversed as of November 2nd,

18   2018, that removed all the enterprise code and all the

19   enterprise modules, yeah, to the private repository, so

20   that's true. And, yeah, they even announced I think

21   that they were open core.

22   Q.   Was there a prior release Version 3.5 that had

23   enterprise modules that were not part of the enterprise

24   repository?

25   A.   Was there a prior release. Like -- well, so

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1   A.   Yeah. Yeah.

2   MR. RATINOFF: I'm going to put up another

3   document. This is -- Tab 25 will be Exhibit 19.

4   (WHEREUPON, Exhibit 19 was marked for

5   identification.)

6   BY MR. RATINOFF:

7   Q.   Let me know if you have that up.

8   A.   Yep, I've got it.

9   Q.   So looking at this email, it shows ben@atomrain

10   and brad@atomrain.com. Do you see those two email

11   addresses?

12   A.   Yes.

13   Q.   Those are the email addresses we discussed

14   earlier that belong to you and your brother, correct?

15   A.   Yes.

16   Q.   This is johnmarksuhy@purethink.com. I don't

17   know if we've seen that address before. Do you

18   recognize it?

19   A.   Yeah. Yeah.

20   Q.   So this is a document that was produced by

21   Mr. Suhy's counsel. And do you have any reason to

22   believe this isn't an accurate email that you received?

23   A.   No, no reason.

24   Q.   Do you see the subject there, graphstack.io -

25   avoid trademark issues?

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 1   good way, and I don't think Neo was too receptive of

 2   being in a position of wanting to help find a solution,

 3   kind of filed a lawsuit against us, so I don't think

 4   there was really much opportunity to discuss it.

 5            MR. RATINOFF:  Okay.  So let me move on to

 6   another exhibit.

 7            (WHEREUPON, Exhibit 21 was marked for

 8       identification.)

 9   BY MR. RATINOFF:

10       Q.   This will be Exhibit 21, I believe.  This was

11   produced as Bates number N4J-GFI_000092.  This is a

12   printout from Graph Foundation's website as of

13   September 24, 2019.

14            Do you have any reason to believe this isn't a

15   correct printout of what was on Graph Foundation's

16   website as of that date?

17       A.   No reason, no.

18       Q.   And looking at Licensing, do you see that

19   heading right there?

20       A.   Yes.

21       Q.   And it says:

22                "ONgDB distributions are

23                licensed under AGPLv3 as a free and

24                open drop-in replacements of Neo4j

25                Enterprise commercial licensed
```

157

1   distributions with the same version

2   number."

3   Do you see that?

4   A.   Yes.

5   Q.   What did Graph Foundation mean by drop-in

6   replacement?

7   A.   I think we provided an explanation of this.

8   Drop-in, I think as everybody understands it in

9   development, you know, essentially functions

10   equivalently from one version to another. So if you

11   took a Neo4j Enterprise version, let's say 3.5.4, the

12   database format that it creates would work with ONgDB

13   3.5.4, so you can essentially write your data, and with

14   Neo4j Enterprise, you can use that same data with ONgDB.

15   Q.   And just to clarify, that's Graph Foundation's

16   understanding of drop-in replacement?

17   A.   Yeah. Yeah, that's on our site, so.

18   Q.   And as of ONgDB Version 3.5.4, it's Graph

19   Foundation's belief at that time it was a hundred

20   percent identical to Neo4j Enterprise 3.5.4?

21   A.   No, it was not one -- I mean, it couldn't be

22   100 percent identical because Neo4j was close source as

23   of 3.5.0-RC1, and so any time after that there have to

24   be some differences. And so drop-in does not mean

25   identical; it refers more to compatibility.

158

1   Q.   Okay. You mentioned release I guess -- let me

2   start over.

3   You mentioned Neo4j 3.5.0-RC1. Is that a

4   pre-release version of Neo4j 3.5?

5   A.   Yes, it's a release candidate.

6   Q.   And that was available on Neo4j's GitHub?

7   A.   Yes.

8   Q.   And was Neo4j 3.5.0-RC1, was that released

9   under the AGPL plus Commons Clause by Neo4j?

10   A.   Yes.

11   Q.   Is that -- is 3.5.0-RC1, is that the code base

12   that ONgDB 3.5.4 is based on?

13   A.   What do you mean by based on?

14   Q.   Well, you mentioned that it couldn't be

15   identical because the last version that was available

16   before one closed was 3.5.0-RC1.

17   A.   Right.

18   Q.   So ONgDB 3.5.4 isn't 100 percent identical to

19   Neo4j 3.5.4, correct?

20   A.   Correct, they're not 100 percent identical.

21   Q.   So if they're not 100 percent identical, what

22   is -- what is the same between ONgDB 3.5.4 and Neo4j

23   3.5.4?

24   A.   It's a great question. Neo4j source is closed

25   so we don't know.

1   Q.   So as of ONgDB 3.5.4, Graph Foundation had no

2   way of knowing whether that was identical to Neo4j's

3   3.5.4, correct?

4   A.   Yeah, there's no way to know that they're

5   100 percent identical, correct.

6   Q.   How is Graph Foundation able to represent that

7   3.5.4 was a drop-in replacement, ONgDB, that is, for

8   Neo4j 3.5.4?

9   A.   I think I described it earlier. Drop-in

10   replacement refers more to compatibility of features, so

11   we were able to take a Neo4j 3.5.4 version, create a

12   database and just show that it worked with ONgDB at that

13   same version. So I think that's exactly what we

14   described, and I think that's exactly what we did.

15   That's the only thing that we can really do absent

16   having the source code is just show that they are

17   compatible, they can both read the same database format

18   which is one of the most essential things to make it

19   drop-in.

20   Q.   Did the Graph Foundation do one for one -- let

21   me strike that.

22   So with ONgDB -- do you mind if I leave out the

23   dots -- it's a mouthful -- and just say 3-5-4 is easier?

24   A.   That's fine.

25   Q.   So ONgDB 3.5.4, does that -- did that contain

160

1   additional or different source code from Neo4j 3.5.4?

2   A.   We have no way of knowing, but we assume that

3   they were different. Neo4j could have used our code

4   because it's open, but we could not have used their code

5   because it's closed. So they could have used our code

6   to make their release. We assume that they didn't, but

7   we can't see their code.

8   Q.   So ONgDB 3.5.4 contains source code that's not

9   authored by Neo4j, correct?

10   A.   Yes, that's correct.

11   Q.   Do you understand what the term glue code is?

12   A.   Yes.

13   Q.   What's your understanding of glue code?

14   A.   That it's mostly code that's used to maintain

15   compatibility between interfaces.

16   Q.   So ONgDB 3.5.4 contains glue code. Is that a

17   fair statement?

18   A.   It certainly contains some code that's needed

19   to maintain compatibility with core, which we bring in,

20   which is part of common, so it does contain some of that

21   for shifting interfaces as well as fixes and

22   enhancements.

23   Q.   So how did -- how did you, meaning Graph

24   Foundation, create 3.5.4 if Neo4j was no longer

25   releasing its code at that time?

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1   A.   We merged in all of the core commits for 3.5.4,

2   so that's everything for community, and then, based on

3   whatever feedback was given from the community,

4   developed any of the fixes that we could for releasing

5   the enterprise code.

6   Q.   Okay. So the fixes that you put into 3.5.4,

7   they were authored by non-Neo4j coders; is that correct?

8   A.   Yes.

9   Q.   And so -- and Graph Foundation would have no

10 way for certain to know whether it actually included

11 every fix that Neo4j put in its Neo4j 3.5.4, correct?

12   A.   I'm sorry. Could you repeat.

13   Q.   Sure. So Graph Foundation would have no way to

14 know for certain whether -- strike that.

15   Graph Foundation -- you mentioned fixes for the

16 community, and in reference to that, you did not include

17 patches that came from Neo4j per se, correct?

18   A.   We did not include patches that came -- are you

19 asking if we have code? What do you mean by we did not

20 include patches that came from Neo4j?

21   Q.   You mentioned there were fixes that were put in

22 place through ONgDB repository, correct?

23   A.   Yes.

24   Q.   And where did those fixes come from?

25   A.   Oh, from community contributors.

162

1   Q.   And Graph Foundation would have no way of

2   knowing whether there were patches included in Neo4j's

3   close portion of enterprise 3.5.4, correct?

4   A.   Right. We wouldn't know what code changes

5   they're making to their source because it's private.

6   Q.   So the only way you would understand what the

7   potential fixes there were would be looking at Neo4j's

8   changelog for each version?

9   A.   We could use what was reported on GitHub, so

10   some people report issues on GitHub still. We can use

11   what our community users report to us, and we can

12   include fixes that are in core.

13   Q.   So you mention there was enterprise features

14   that were taken to be closed after 3.5. Which features

15   were those?

16   A.   I'm sorry. What did you say I mentioned?

17   Q.   You said that when Neo4j took its enterprise

18   portion of the software to close core or private, I

19   guess was maybe the word you used, which features were

20   taken private?

21   A.   Everything in the enterprise directory.

22   Q.   Were there key features in the enterprise

23   software that were taken private in your mind?

24   A.   Yes.

25   Q.   What were those key features?

163

1   A.   Causal clustering, backups, restore,

2   monitoring, security, advanced Cypher. You know, that's

3   about -- I think that's the list.

4   Q.   So ONgDB 3.5.4 had those features in it,

5   correct?

6   A.   Yes.

7   Q.   And -- but those weren't necessarily the same

8   exact code for those features in Neo4j 3.5.4, correct?

9   A.   That's right, they wouldn't have been a hundred

10   percent identical.

11   Q.   Where did the code for those features in ONgDB

12   3.5.4 come from?

13   A.   They started out open source and then changes

14   in enhancements would have been made thereafter by

15   commits to Graph Foundation.

16   Q.   Okay. But the base code of those features came

17   from Neo4j 3.5.0-RC1?

18   A.   That would have been I suspect the start of it.

19   MR. RATINOFF: I'm sorry. Can you read that

20   answer back, please.

21   (Record Read.)

22   BY MR. RATINOFF:

23   Q.   What do you mean by the start of it?

24   A.   I mean that that's -- that that was like the

25   state of the code as of 3.5.0-RC1 was the last time that

                                                              164

1   Neo made any public contribution, so thereafter

2   everything would have been from the open source

3   community.

4   Q. For those particular enterprise features that

5   you mentioned?

6   A. Yes.

7   Q. Give me one second. You mentioned

8   contributions from the community. So Graph Foundation

9   relied on open source contributors to fix issues with

10   various versions of ONgDB?

11   A. Yes.

12   Q. And were those -- when you say open source

13   community, does that include Neo4j contributors?

14   A. Yes.

15   Q. And that would also include Graph Foundation

16   contributors?

17   A. Yes.

18   Q. So you would have to go to Neo4j's GitHub

19   repository to find the open source contributions to

20   Neo4j's software?

21   A. You can see it on our repo too.

22   Q. You would be able to see Neo4j contributors'

23   open source contribution on Graph Foundation's GitHub?

24   A. Yeah, because it's a fork.

25   Q. What do you mean by that?

165

1   and the release repository links to the distributions on

2   the CDN.

3   Q.   Does the testing include a function that

4   includes function testing?

5   A.   Yes.

6   Q.   It includes performance testing?

7   A.   Yes.

8   Q.   And what other type of testing is done before

9   it's released, a particular version?

10   A.   Integration testing, stress testing, integrity

11   of the packaging.

12   Q.   That's all done by Graph Foundation?

13   A.   Yes.

14   Q.   And do you have any idea of what type of

15   testing Neo4j uses on its coded versions of Neo4j

16   software?

17   A.   Only the stuff that was public is what we would

18   know about. We wouldn't know anything about their

19   private testing.

20   Q.   For example, Neo4j 3.5.4, you wouldn't have any

21   idea what testing is done before Neo4j released that

22   software?

23   A.   We know of all the tests that are committed

24   that are open source so there's quite a few. The

25   open source code base contains tests.

 1   Q. But you wouldn't have any insight into the

 2 testing that's done on the closed source components of

 3 Neo4j 3.5.4?

 4   A. Correct. If it's closed source, we don't

 5 know -- we don't have the code and we don't know their

 6 methods.

 7   MR. RATINOFF: Okay. Let me see. I want to

 8 put this exhibit up. Hopefully I will guess the right

 9 number.

10   (WHEREUPON, Exhibit 22 was marked for

11   identification.)

12 BY MR. RATINOFF:

13   Q. So we'll mark Tab 21 as Exhibit 22. This is --

14 first page bearing Bates number N4J_018667, and this is

15 a printout from Graph Foundation's Twitter account dated

16 7/19/2020.

17   Do you have this document in front of you? Do

18 you recognize this document?

19   A. Yep.

20   Q. What is it?

21   A. It's a tweet from our account.

22   Q. "Our" being Graph Foundation?

23   A. Yeah, Graph Foundation account.

24   Q. It says:

25   "Please report all #Neo4j

                                                              169

1   Enterprise 3.5 issues to the ONgDB

2   GitHub."

3   Do you see that?

4   A.   Yep.

5   Q.   And continues after the web address:

6   "...so we can more effectively

7   track bugs related to open source

8   enterprise code versus open core

9   community."

10   A.   Right.

11   Q.   Why did Graph Foundation tweet this?

12   A.   Yeah, so a lot of -- a lot of users tend

13 to -- you know, in the past have reported issues to

14 Neo4j's repo that affected enterprise and community code

15 because it was open source, they were both open source,

16 but as soon as Neo4j took enterprise away, there's no

17 longer an open source project there so they kind of left

18 a hole and users didn't really know where to be

19 redirected to to report enterprise issues on

20 open source. So this was to try to redirect them, to

21 inform them where open source development was being

22 maintained and where they can track bugs.

23   Q.   So you're asking Neo4j users to go to ONgDB's

24 GitHub repository to report bugs?

25   A.   That are related to enterprise, yeah.

                                                        170

1   Q.   Neo4j Enterprise, correct?

2   A.   The -- yeah, as we understand it, the

3   enterprise -- open source enterprise, yeah.

4   Q.   You don't think that's confusing the customers

5   out there to redirect Neo4j bugs to -- I'm sorry -- to

6   Graph Foundation's GitHub repository?

7   MR. PERNICK: Objection; vague.   Can you

8   restate that.

9   MR. RATINOFF: Sure.

10   BY MR. RATINOFF:

11   Q.   So did you think that your tweet would confuse

12   anyone as to where to report bugs to Neo4j software?

13   MR. PERNICK: Objection; vague; calls for

14   speculation.

15   THE WITNESS: Yeah, I can't speak to other

16   people's -- how they would interpret this.   I can see

17   what my intent with it was which is what I think I said.

18   BY MR. RATINOFF:

19   Q.   I'm asking you I guess what -- I appreciate

20   your prior testimony, but what I'm asking you is did it

21   occur to you when tweeting this that it may confuse

22   Neo4j users to report their bugs to Graph Foundation's

23   GitHub repository rather than Neo4j's repository?

24   MR. PERNICK: Objection; vague.

25   THE WITNESS: I felt that it was fairly clear

                                                         171

that enterprise no longer existed, open source, and that

was the sole reason that anybody would report an

enterprise issue on Neo4j's GitHub. If enterprise is no

longer open source, there's no reason to report anything

on their GitHub, so I feel like it's very clear to

redirect open source enterprise users to the right

place.

BY MR. RATINOFF:

    Q. The right place being Graph Foundation's

GitHub?

    A. Yeah, where open source enterprise was being

worked on.

    Q. Okay. So you're basically soliciting users of

Neo4j Enterprise, which is closed, to report their

issues to Graph Foundation's GitHub repository, correct?

        MR. PERNICK: Objection; vague.

BY MR. RATINOFF:

    Q. Strike that question. Let me ask another

question.

        I noticed you use Neo4j hashtag there. Do you

see that?

    A. Yeah.

    Q. Why would you use a Neo4j hashtag there?

    A. It's a topic relevant to Neo4j users.

    Q. Okay. So you use the hashtag to raise the

172

1   prominence of this tweet to Neo4j users; is that

2   correct?

3   MR. PERNICK: Objection; vague.

4   THE WITNESS: I think that's restating it. I

5   think I -- I think it's relevant to people in the Neo4j

6   community. I mean, Neo4j users, you know, Neo4j

7   community at large.

8   BY MR. RATINOFF:

9   Q. But wouldn't Neo4j Enterprise users not be in

10 the community since it's closed source?

11   A. Well, they would still be in the community;

12 they need redirected. A lot of people were just finding

13 out about all of the open core changes and people needed

14 a place to be redirected to, so I think they needed to

15 be informed about their option. Seems pretty clear to

16 me.

17   Q. Okay. But you're not giving them an options

18 tweet. You're redirecting users of close source to

19 report their issues to Graph Foundation's GitHub,

20 correct?

21   MR. PERNICK: Objection; vague.

22   THE WITNESS: I think I stated what we're

23 doing.

24 BY MR. RATINOFF:

25   Q. Okay.

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1   A.   Did you want me to restate what we're doing?

2   Q.   Sure, if it answers the question.

3   A.   Maybe you have to re-ask your question, then.

4   MR. RATINOFF: Can you please read my question

5   back.

6   (Record Read.)

7   MR. PERNICK: Objection; vague.

8   THE WITNESS: Can you just ask that as a

9   question.

10   BY MR. RATINOFF:

11   Q.   I'll strike the question.   I didn't quite hear

12   all of it, but it didn't sound like -- there was some

13   extra word in there.

14   So let me ask you this: Do you understand what

15   hashtags are?

16   A.   I understand that a hashtag is used to make or

17   create a topic so that people that want to go read about

18   a topic or, you know, look at things that are related to

19   a certain topic, yeah, it's a way to tag things.

20   Q.   So by tagging Neo4j, if someone's searching

21   Twitter for #Neo4j, it would be more likely this tweet

22   would come up, correct?

23   A.   Yes, if they're interested in -- if they're a

24   Neo4j user or if they're looking at, you know, things

25   relating to Neo4j that are happening, this would be

174

1   something that's happening around Neo4j.

2   Q. And I notice there's no hashtag next to ONgDB.

3   Why is that?

4   A. I'm not sure.

5   Q. So you use the #Neo4j to make it more likely

6   for a person interested in Neo4j Enterprise to have seen

7   this tweet, correct?

8   MR. PERNICK: Objection; vague.

9   THE WITNESS: I think like what I said, we use

10   the hashtag so that Neo4j users can be informed.

11   BY MR. RATINOFF:

12   Q. So my question is it's more likely that a Neo4j

13   user will find this tweet because he used the hashtag

14   Neo4j, correct?

15   MR. PERNICK: Same objection; vague.

16   THE WITNESS: I mean, that assumes -- yeah,

17   that assumes that Neo4j users are looking at that

18   hashtag, but anybody that is looking at the Neo4j

19   hashtag can become informed and that includes Neo4j

20   users.

21   BY MR. RATINOFF:

22   Q. So it's more likely that a Neo4j user would

23   find this tweet by using the Neo4j hashtag versus using

24   just the word Neo4j, correct?

25   MR. PERNICK: Objection; vague; calls for

175

1   speculation.

2   THE WITNESS: I mean, we can't -- I mean, we

3   can't really speculate about how people find us. I

4   mean, what we can do is try to give information to as

5   many places as possible.

6   BY MR. RATINOFF:

7   Q. I understand that, but what I'm saying is is

8   you've already explained your understanding of what a

9   hashtag is. What I'm asking you is by using a hashtag

10   with Neo4j, it's raising the prominence of this tweet to

11   people looking for Neo4j versus had you simply

12   referenced Neo4j without the hashtag, correct?

13   A. It places that tweet in a topic so it is

14   possible that more people would see it as a result.

15   Q. So you used the hashtag Neo4j to make it more

16   likely that this tweet would be seen by Neo4j users,

17   correct?

18   A. Yes because our objective is to inform. We

19   want Neo4j users to be informed about their options.

20   Q. But you're not giving an option here. You're

21   just asking to report bugs in Neo4j Enterprise to Graph

22   Foundation, correct?

23   MR. PERNICK: Objection; vague. The document

24   speaks for itself.

25   THE WITNESS: So the option that they knew of

                                                         176

1   today was one. Prior to this, they only had one option

2   which was the Neo4j repo, so in our mind we were giving

3   them a second option which is to inform them that

4   there's another place that they can report open source

5   enterprise issues, and I think that's exactly what we

6   said, effectively track bugs related to open source

7   enterprise, and that would no longer apply to Neo4j's

8   code base because it was no longer open source

9   enterprise. So I think that's clear.

10   MR. RATINOFF: Let me put up Tab 23. And this

11   was attached as Exhibit K to the first set of RFAs,

12   John, so I just wanted to let you know. So I'm only

13   going to ask a couple questions about this since it's

14   already been subject to RFAs and been authenticated.

15   (WHEREUPON, Exhibit 23 was marked for

16   identification.)

17   BY MR. RATINOFF:

18   Q.   So this starts with the Bates number

19   N4J-GFI_000078, and this is a printout from the Graph

20   Foundation website dated September 24, 2019.

21   Do you recognize this document?

22   A.   Yes.

23   Q.   Okay. What is it?

24   A.   It's a blog post.

25   Q.   Did you author this blog post?

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1   A.   Yes.

2   Q.   Why did you put this post up on Graph

3   Foundation's website?

4   A.   Because it's relevant to Graph Foundation.

5   Q.   Other than being relevant, was there a specific

6   reason why you drafted this post?

7   A.   Well, I mean, I think the post speaks for

8   itself. It's informative, I think it's an informative

9   post so to inform people.

10   Q.   Okay. I'm asking the reason why you did it,

11   not what it does to people. So I'll ask it a different

12   way.

13   Why did you author this post and put it up on

14   Graph Foundation's website at this time, which is

15   January 31, 2019?

16   A.   To inform people of the changes that happened

17   and to let them know what was happening in the community

18   in response to it.

19   Q.   And when you came up with the name ONgDB, it

20   stood for not just Open Native Graph Database, but in

21   your mind did it also stand for open Neo4j graph

22   database?

23   A.   It stood for Open Native Graph DB, and then I

24   think there was an early version of this blog that

25   included some developer humor as a throwback to GNU and

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1   the Free Software Foundation and its recursive name that

2   I think was cited as part of the original claim that I

3   guess was offensive to Neo, and so we decided, like,

4   that joke might have been in bad taste so we removed it.

5   Q.   Okay. So in other words, it was just a joke

6   that you -- and you can look at the specific page. It's

7   4 out of 8 and it's in the second paragraph at the end.

8   A.   Yeah.

9   Q.   It says:

10   "As a throwback to those early

11   days and our beginnings on GNU

12   (remember GNU's not Unix), we decided

13   on the name ONgDB."

14   That's -- do you see where I'm at?

15   A.   Yes, I see where you're at.

16   Q.   The last part of that says "but also ONgDB's

17   Neo4j Graph DB"?

18   A.   Correct.

19   Q.   So that was just a joke?

20   A.   Yes. We apparently should have resisted the

21   double meaning because it was a bad joke in bad taste.

22   The thing that we cared about was -- it stands

23   for Open Native Graph DB. That's what we always cared

24   about. We felt like it needed to be open and it needed

25   to be native and it was a graph.

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1   them what would be okay in terms of doing a fork?

2   A.   Unfortunately, because they caused the

3   confusion, they didn't have great answers. They were

4   sort of the source of it all.

5   Q.   That wasn't my question.

6   My question was did you ever think to go to

7   Neo4j to ask how you can refer to Neo4j as a project?

8   A.   No. No. Because I think that they had moved

9   to a place -- I don't know. Everything -- I don't think

10   there was really much to be -- to be done in terms of,

11   like, how do we talk about the project, Neo4j Community

12   versus Enterprise. I don't know. We didn't think -- we

13   didn't think about it.

14   Q.   And you never went to their website to see if

15   there was any guidance on how to refer to Neo4j as a

16   fork?

17   A.   No. I don't see why that -- I don't see why

18   they would really have an answer on it.

19   Q.   Well, but you remember those trademark

20   guidelines you saw, right, that you looked at?

21   A.   Yeah.

22   Q.   So at least as of when the complaint was filed,

23   Neo4j provided guidance to people that fork Neo4j

24   software, correct?

25   MR. PERNICK: Objection; misstates the

181

1   document. The document speaks for itself.

2   THE WITNESS: I think we said what we said

3   because it made sense of how to describe the project.

4   BY MR. RATINOFF:

5   Q. But that's not the question.

6   So my question is, there is guidance that

7   you're now aware of on Neo4j's website explaining how to

8   refer to Neo4j as a fork, correct?

9   A. So -- sorry. Are you saying, like, as of today

10   there is guidance?

11   Q. Yes.

12   A. Yeah, as of today there is guidance on Neo4j's

13   website that does talk about, like, how to talk about a

14   fork of Neo4j, which is interesting that they put that

15   up there, I guess.

16   Q. Okay. And you also testified earlier that you

17   read those trademark guidelines around sometime after

18   the complaint was filed, right?

19   A. When the case was filed, yeah.

20   Q. And then you said you testified I believe you

21   went to Neo4j's website and actually found the

22   guidelines, right?

23   A. Yes, uh-huh.

24   Q. And you read the guidelines at that time?

25   A. Yes.

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1   Q.   Did Graph Foundation change the way it was

2   referring to Neo4j based on those guidelines?

3   MR. PERNICK: Objection; asked and answered.

4   THE WITNESS: I don't think the guidelines

5   actually give us a way to talk about the open source

6   Neo4j graph database, do they?   I think it just says you

7   can't do that.   I don't think it -- I don't know.   Do

8   they actually give you a way to do that?

9   MR. RATINOFF: You reviewed them so you can

10 tell me.   I can bring the exhibit back up.   We'll move

11 on.   If I have time I'll come back to that.

12   Let's go ahead and put this one up here.   This

13 should be Tab 31.

14   (WHEREUPON, Exhibit 24 was marked for

15   identification.)

16 BY MR. RATINOFF:

17   Q.   Let me know when you've got that.   Do you have

18 Tab 31 in front of you?

19   A.   Yes.

20   Q.   So this was printed out on June 10, 2020, from

21 Graph Foundation's GitHub.   You can see that down at the

22 footer there.   And right next to that is Bates number

23 N4J_018645.   Do you see that?

24   A.   Yes.

25   Q.   Do you have any reason to believe this isn't an

183

1   accurate printout from Graph Foundation's GitHub

2   repository?

3   A.   No reason. It looks right.

4   Q.   All right. Let's mark this as Exhibit 24.

5   And then looking at the second text box here,

6   it says "Brad Nussbaum commented February 13th."

7   Is that you?

8   A.   Yes.

9   Q.   So -- and that's your user name on GitHub?

10   A.   Yes.

11   Q.   Okay. Moving down, it says -- you have an

12   entry here on April 13, 2020. Do you see that?

13   A.   Yes.

14   Q.   It says:

15   "The Graph Foundation can only

16   change the license of source code

17   where it holds the copyright."

18   A.   Yes.

19   Q.   So you understand that only a licensor can

20   change the source code -- I'm sorry -- change the

21   license for its source code, correct?

22   A.   I understand that the Graph Foundation can only

23   change the license of the source code that it holds the

24   copyright to.

25   MR. RATINOFF: Okay, I'm just trying to skip a

184

1   A.   Yes, I see that.

2   Q.   So what Graph Foundation means by that is it's

3 made fixes that it's aware of in the open -- strike

4 that.

5   Previously you testified that the fixes would

6 come from the community. Is that also true with

7 Version 3.5.14?

8   A.   Yes.

9   Q.   And was ONgDB 3.5.14 a drop-in replacement for

10 Neo4j 3.5.14?

11   A.   I don't know -- I don't know. It might -- it

12 might still be. I'd have to go back and look at the

13 list. Some of these we stopped noting -- if it was, we

14 noted it as such or the language on the site was as

15 such.

16   Q.   But there's no -- there's no way to know

17 whether the important improvements and fixes in 3.5.14

18 were made in Neo4j's 3.5.14, assuming there is a 3.5.14?

19   A.   Sorry. No way to know what?

20   MR. PERNICK: Can you restate that, Jeff.

21   MR. RATINOFF: Thank you. That was my --

22 strike that.

23 BY MR. RATINOFF:

24   Q.   What's the -- what's the last version of ONgDB

25 that Graph Foundation believes is a drop-in replacement

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1   for a closed version of Neo4j?

2   A.   I mean, I think we changed it pretty early on

3   in the 3.5 cycle because after some period of time it

4   gets harder and harder to verify that just because the

5   source code can drift more and more. So I have to go

6   back and look at what exact date we took that language

7   off of the site, but it's no longer on our current site

8   to describe ONgDB that way. We changed it to be an

9   open source alternative, so yeah.

10   Q.   You can't pinpoint which version that occurred?

11   A.   I mean, it must have been some time

12   between -- I don't know. I don't know when it was, when

13   that changed. I could try to find out, but I don't

14   know. I'm sure it was between 3.5.4 and 3.5.11. I

15   think that those are -- yeah, 3.5.4 might have been the

16   last time that we referred to it that way.

17   Q.   But you're not sure?

18   A.   Actually, it's probably pretty close because

19   3.5.4 was October 2019. Yeah, I don't think we were

20   referring to it all the way then, so by 3.5.11 we

21   weren't. I think 3.5.4 was the last release I see on

22   here that probably had it.

23   Q.   So looking at the bottom of Tab 39, you see

24   there's a list of different versions of ONgDB.

25   A.   Yes.

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1   Q. So as of versions listed here starting

2 after -- I'm sorry, which version was it where you

3 believe -- 3.5.11?

4   A. It would have been after 3.5.4, I think.

5   Q. 3.5.4. So after 3.5.4, all these subsequent

6 versions that Graph Foundation no longer referred to

7 ONgDB as a drop-in replacement for the equivalent

8 version of Neo4j?

9   A. So the statement about it being drop-in

10 replacement was on the main page describing it and we

11 would have taken that language down at a point in time,

12 and that point in time is probably when we felt like

13 it -- we no longer could, you know, maybe reliably

14 guarantee that it was a drop-in replacement. So the

15 language did get dropped, and I think it's somewhere

16 around the time where we either felt it could no longer

17 be reliably described that way, yeah.

18   Q. And that was sometime between 3.5.4 and 3.5.11?

19   A. Well, yeah, yeah.

20   Q. Yes, it was sometime between --

21   A. Yeah. Yes, sometime between that period, I

22 believe.

23   Q. Why couldn't Graph Foundation continue to refer

24 to ONgDB as a drop-in replacement for Neo4j?

25   A. I think for the same reasons we said that it

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1   could be and that, you know, we think it can be a

2   drop-in replacement as long as the compatibility is

3   there and other systems can integrate with it on its

4   interfaces effectively. I think at some point we become

5   less and less sure as time moves on and we don't see the

6   source code from Neo and there's possible drift, so

7   we -- early on we were able to do, you know, some degree

8   of testing, although we dropped it into existing 3.5.4

9   releases.

10   I don't think we -- we had a desire to do that

11   testing for every single release, and so I think for us,

12   later on, it just -- it felt like a harder thing to try

13   to guarantee, and what we wanted to focus on was telling

14   folks that this is going to be divergent and it's going

15   to be forking and not always have to guarantee that it's

16   going to be a drop-in replacement.

17   I mean, just to fast forward, like 4.0, we've

18   seen -- you know, there's so many changes that have

19   happened to core in 4.0 that the odds of ONgDB's 4.0

20   being a drop-in are just very small. So I think early

21   on, in the early days, we used it because we could

22   demonstrate it and it was true, and as things move on we

23   dropped it because it's just too hard to demonstrate.

24   Q.   Well, I don't want you to guess when that was.

25   If you want, on a break, if it's okay with your counsel,

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1   you're welcome to confirm what version that was at.

2   MR. RATINOFF: But that being said, I'm going

3   to go ahead and drop in this next exhibit. I believe

4   it's going to be Exhibit 26. You should see Tab 41.

5   (WHEREUPON, Exhibit 26 was marked for

6   identification.)

7   BY MR. RATINOFF:

8   Q. Do you see that? It should have a Bates number

9   at the bottom, N4J_018732. It's a printout dated

10   6/10/2020 from the Graph Foundation's website.

11   Do you see that?

12   A. Yes.

13   Q. And this is the page for ONgDB 3.6.0-RC1,

14   correct?

15   A. Yeah. This is the landing page for ONgDB,

16   yeah.

17   Q. And so there is no Neo4j 3.6, correct?

18   A. To our knowledge, correct. Neo4j's never

19   released a 3.6 version.

20   Q. So at this point, ONgDB 3.6.0, this is in your

21   mind a divergent fork of Neo4j?

22   A. Most definitely.

23   Q. And it wouldn't be accurate to describe it as a

24   drop-in replacement at this point?

25   A. 3.6 is definitely not a drop-in replacement.

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1   Q. And you wouldn't describe 4.0 as a drop-in

2 replacement either?

3   A. I mean, because Neo4j has released a 4.0, it's

4 possible that it can be, but it's very unlikely. I

5 don't know that we want to take the effort to prove it

6 so that we can say it is such.

7   Q. Okay. Do you know offhand which entities are

8 using ONgDB currently?

9   MR. PERNICK: I'm going to object; vague.

10   Are you asking him whether he knows every

11 entity or what entities he knows?

12   MR. RATINOFF: What entity.

13   MR. PERNICK: So --

14 BY MR. RATINOFF:

15   Q. Let me ask the question: Which entities are

16 you aware of that are currently using ONgDB?

17   A. I think we know that there are -- that the IRS

18 is using it. I think what we sent in some emails, I

19 think Tufin is using it. There's handfuls of

20 individuals. I think, like, our one donor, Liquan I

21 think is his name, I think he's using it. He donated.

22 I think I had a small conversation with him about it.

23 There's various people in the Slack channel that we have

24 that are using it.

25   Q. Okay. Actually, before we -- I'm going to show

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1   and accurate printout from AtomRain's website?

2   MR. PERNICK: So Mr. Nussbaum is not here to

3   testify on behalf of AtomRain.

4   MR. RATINOFF: I understand. I'm asking him

5   whether -- he's got his own personal knowledge since he

6   works for AtomRain, so to the extent he knows

7   personally, I think that's fairly imputed on Graph

8   Foundation. I'm not going to be asking questions from

9   AtomRain's perspective.

10   MR. PERNICK: Okay.

11   THE WITNESS: Yes, this appears to be a

12   printout of AtomRain's site.

13   BY MR. RATINOFF:

14   Q. And AtomRain, is that a company that utilizes

15   ONgDB?

16   A. To the best of my knowledge, does work --

17   consulting work that involves Neo4j and ONgDB.

18   Q. So I'm just going to run through these various

19   entities here. I'll start with Sony pictures. Do you

20   know if Sony pictures is using ONgDB?

21   A. No. And I doubt any of these -- most of these

22   companies are probably not. A few of them might be.

23   Q. Okay. So which ones do you understand are

24   using ONgDB?

25   A. I think Tufin and the IRS, yeah.

194

1   Q.   The Department of Defense?

2   A.   I don't think so, no.

3   Q.   No entities fall within the Department of

4 Defense?

5   A.   I'm sorry. No what?

6   Q.   No entities or agencies fall within the

7 Department of Defense?

8   A.   No.

9   Q.   US Air Force using ONgDB to your knowledge?

10   A.   Not that I know of.

11   Q.   UBS, are they using ONgDB?

12   A.   No.

13   Q.   WiserCare, are they using ONgDB?

14   A.   Again, none of these except for Tufin and IRS

15 are the ones that I know are. Oh, yeah, and Cyber GRX

16 is on this list.

17   Q.   Cyber GRX?

18   A.   Yeah.

19   Q.   Where is that? Okay, I see. They've got the

20 little logo in the middle there.

21   I think you had mentioned some other entities

22 that aren't on here. Do you know who Next Century is?

23   A.   Next Century?

24   Q.   Yeah.

25   A.   Like, do I personally know who they are as a

195

1   company, or are you asking if I know that they're using

2   ONgDB?

3   Q. Do you know -- well, I guess one follows the

4   other. Do you know who at Next Century is, as a

5   company?

6   A. The name sounds familiar. I think there was an

7   email or something from them. Are they a gov company or

8   something?

9   Q. I don't know. I'm just asking if you know who

10   they are.

11   Do you know if they're a user of ONgDB?

12   A. I don't, no.

13   Q. AdForm, do you know who AdForm is?

14   A. I think I had one email with them, yes. I

15   mean, I know they are a company.

16   Q. Are they using ONgDB?

17   A. I don't know.

18   Q. How about Soft Strategy, do you know who

19   Soft Strategy is?

20   A. Soft Strategy, the name sounds familiar. I

21   don't know them deeply or anything.

22   Q. Okay. I've lost my chat apparently so I'm just

23   going to throw this up again. And this was previously

24   marked as Exhibit -- unfortunately, I don't have the

25   exhibit number. Tab 10 was previously marked as

196

1   Exhibit 9. I just re-dropped it here for your

2   convenience. And I'll direct your attention to page 17

3   out of 180. Are you there?

4   A. Yes.

5   Q. It states toward the bottom of the page:

6   "GFI has identified the

7   following entities or individuals

8   that may have downloaded ONgDB."

9   Do you see that?

10   A. Yes.

11   Q. So there's -- Next Century is listed there,

12   Soft Strategy, AdForm. Do you see those three names?

13   A. Yes.

14   Q. Does that refresh your recollection as to

15   whether they're using ONgDB?

16   A. So these are individuals that we -- that we've

17   shared emails with, so I mean, I think our assumption is

18   that they're using ONgDB still, but GFI doesn't track

19   that usage. So at some point in time they've contacted

20   us or made it seem like they would use it.

21   Q. Then you already mentioned Tufin, I believe you

22   testified, is using ONgDB and so is the US Department of

23   Treasury, correct?

24   A. Yeah. Yes.

25   Q. Is there any other government agencies that

197

1   you're aware of that are using ONgDB?

2   A. No.

3   MR. RATINOFF: Okay. Let me go ahead and jump

4   ahead here. I'm going to go ahead and drop in another

5   exhibit.

6   (WHEREUPON, Exhibit 28 was marked for

7   identification.)

8   BY MR. RATINOFF:

9   Q. Do you see this email?

10   A. Yes.

11   Q. It looks like it's an email to you.

12   A. Yes.

13   Q. It says "Hello Brad." I'm going to skip to the

14   second sentence. It says:

15   "I am currently leading the

16   Graph Database team responsible for

17   deploying an ONgDB-based solution

18   into production."

19   Do you see that?

20   A. Yes.

21   Q. Does that refresh your recollection as to

22   whether Next Century is using ONgDB?

23   A. I mean, I guess that's what he said so I assume

24   that's correct. I assume they are.

25   Q. Have you had any further correspondence with

1   Q. So you never had, like, a video conference or

2   telephone call after COVID hit?

3   A. No.

4   MR. PERNICK: Can you restate -- were you

5   asking just with respect to him or with anyone ever?

6   MR. RATINOFF: Well, with AdForm. I'll ask the

7   question to be clearer.

8   BY MR. RATINOFF:

9   Q. After this email, you never had any telephone

10 calls or Zoom conferences with AdForm?

11   A. No. I don't remember -- this one I just

12 remember kind of dying somewhere around that time, but

13 there might have been, like, one or two more exchanges,

14 but I think it just kind of died at some point.

15   MR. RATINOFF: Okay, I'm just going to drop

16 this next one in. It's Tab 103. Mark this as

17 Exhibit 30.

18   (WHEREUPON, Exhibit 30 was marked for

19   identification.)

20 BY MR. RATINOFF:

21   Q. Do you recognize this as Exhibit 30? Sir? Are

22 you still reading the document? Sorry.

23   A. Yes. Yep, I've got it.

24   Q. Actually, if you hover your cursor over your

25 name at the top there, it should be a hyperlink. If you

200

1   hover over there, it should say -- I'll just do a screen

2   share so we'll be on the literal same page.

3   A.   Yeah.

4   Q.   So you should be seeing the same email now.

5   A.   Yes.

6   Q.   And if I hover over your name there, it says

7   mailto:brad@graphgrid.com.

8   A.   Yes.

9   Q.   Do you see that?

10   A.   Yes.

11   Q.   Below your email address is

12   brad@graphfoundation.org. Do you see that?

13   A.   Yes.

14   Q.   Do you use your GraphGrid email sometimes to

15   communicate about Graph Foundation business?

16   A.   No.

17   Q.   So why is there a graphfoundation.org address

18   on that prior email and you've got your response from

19   brad@graphgrid?

20   A.   Because I think we answered all the questions

21   they had that were about open source and they wanted

22   help with a five-day boot camp, I think. They wanted

23   some kind of services and the foundation doesn't offer

24   any services.

25   Q.   So that would be GraphGrid that offers that

201

1   services?

2   A. Yeah, GraphGrid does offer services like that

3   so it was a redirect.

4   Q. You didn't forward this email to your GraphGrid

5   account, though, right?

6   A. I believe it was, yeah.

7   Q. Oh, okay. Does it say forward?

8   A. It was included or sent in there. I don't -- I

9   don't know.

10   Q. Did this training ever happen, this boot camp?

11   A. No. No, it didn't.

12   MR. RATINOFF: Okay. Let me go ahead and mark

13 the next exhibit. This is Tab 48 which I'll mark as

14 Exhibit 31. So my screen share should stop. You should

15 be able to download this new document.

16   (WHEREUPON, Exhibit 31 was marked for

17   identification.)

18 BY MR. RATINOFF:

19   Q. Can you see this document? It should be an

20 email that's from Benjamin Nussbaum to John Mark Suhy

21 and cc'd to Bradley Nussbaum. Do you see that?

22   A. Yes.

23   Q. And again, these are your AtomRain email

24 addresses. Is there any reason to believe you didn't

25 receive this email in your AtomRain email account?

                                                    202

1   Q.   Did AtomRain -- did you at AtomRain ever hand

2   off potential users to Graph Foundation?

3   MR. PERNICK: Objection; vague.

4   THE WITNESS: What do you mean by hand off

5   potential users?

6   BY MR. RATINOFF:

7   Q.   Well, I'll use the words -- I'm using the words

8   in the email that was sent to you which you said you

9   received.

10   So what did you understand "To continue the

11   conversation, do you want to hand off to someone at the

12   foundation," what did you understand that to mean?

13   MR. PERNICK: Objection; vague; calls for

14   speculation.

15   THE WITNESS: I think at times we tried to

16   figure out whether or not -- because, obviously, all of

17   us are wearing a lot of hats, so I think if a

18   conversation was better to be handled by somebody from

19   the foundation, I think that's -- that's all that was

20   intended was to say should somebody from the foundation

21   be contacting them about discussing the open source

22   project.

23   MR. RATINOFF: Okay.   I'm going to drop another

24   document in here.   This is Tab 50, and I'm going to mark

25   this as Exhibit 32.

                                                            204

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1              (WHEREUPON, Exhibit 32 was marked for

2         identification.)

3    BY MR. RATINOFF:

4         Q.   Do you have this open?  This is an email that

5    was produced by your attorney.  It's dated February 19,

6    2019, and the beginning Bates number GFI000071.

7              Do you recognize this email?

8         A.   Yes.

9         Q.   I'm hovering over your email address.  It looks

10   to be from your Graph Foundation email account; is that

11   correct?

12        A.   Yes.

13        Q.   You can scroll down.  This is a pretty lengthy

14   email chain so kind of takes off from where the other

15   one ended.  So I'm going to have you scroll down to your

16   email that you sent on February 19, 2019, at 9:07.

17             Do you see that?

18        A.   Okay.

19        Q.   It says:

20                  "Our intent is to move ONgDB

21             forward in a fully open source

22             manner governed by The Graph

23             Foundation (nonprofit)."

24             Do you see that?

25        A.   Yes.
```

205

1   Q.   Has Graph Foundation applied for a copyright

2   for any source code that's in ONgDB?

3   A.   Have we applied for a copyright? What do you

4   mean by that?

5   Q.   Literally filing a copyright application for

6   source code for ONgDB.

7   A.   Oh, no, we have not filed a copyright

8   application. I'm not sure if we would need to file

9   that.

10   Q.   Moving up to the next email -- this would be

11   from Shahak Nagiel -- I hope I said his name

12   correctly -- February 19, 2019, at 10:46.

13   Do you see that?

14   A.   Yes.

15   Q.   He says:

16   "Nice to meet you as well.

17   Could you please elaborate on this

18   sentence: 'And when Neo4j realized

19   that the additional Commons Clause

20   didn't prevent usage of enterprise

21   features, it made the ultimate

22   decision to remove all enterprise

23   modules.'"

24   Do you see that?

25   A.   Yes.

207

1   Q. And what did you understand that to mean?

2   A. I think that's a quote that's taken from my

3 blog post, but I'm not sure. I'm not sure where that's

4 from, actually, but -- actually, I'm not sure where that

5 came from.

6   I think -- I think it means that at some point

7 I believe that Neo4j realized that a developer had just

8 put in the Commons Clause and didn't really understand

9 licensing and they were still hoping to appear

10 open source and deceive the community, because I think

11 open source has gained them a lot, but then at some

12 point they kind of realized that, you know, they

13 couldn't pretend to be under AGPL any more and still

14 secretively, like, try to tack on the Commons and

15 somehow be closed. So this is just a simplified way of

16 saying that they realized it didn't work and so they

17 close-sourced it.

18   Q. You're just speculating why Neo4j went close

19 core, correct?

20   A. Not why they went close core, but I would say

21 speculating -- yeah, yeah, I would say speculating.

22 That was our belief that they realized it must not have

23 worked.

24   Q. So you have no personal knowledge as to why

25 Neo4j added the Commons Clause?

208

1   A.   No.

2   Q.   You have no personal knowledge as to why Neo4j

3   went open core with its community and closed on

4   enterprise?

5   A.   No, not more than what they said publicly.

6   Yeah, we speculated that it was because of that.

7   Q.   So then the last would be the top, the last

8   email in the string says:

9   "The Free Software Foundation,

10   which owns the rights to AGPLv3

11   license and its use, reviewed the

12   Commons Clause that had been added

13   and determined that it was not valid.

14   AGPLv3 has clauses preventing

15   additional clauses from being added

16   and still licensing under the AGPLv3

17   license."

18   Do you see that?

19   A.   Yes.

20   Q.   The Free Software Foundation didn't actually

21   determine that the Commons Clause was improperly added,

22   correct?

23   A.   No, I think they determined that.

24   Q.   They didn't give a legal opinion. That was

25   your prior testimony.

209

1   A.   Correct. I don't think I told him that they

2   gave a legal opinion, did I?

3   Q.   You're just extrapolating?

4   A.   Yeah, correct. I think I'm surmising the

5   response that was given to us.

6   Q.   They never expressly stated that the

7   Commons Clause not to be valid, correct?

8   A.   They never expressed a legal opinion.

9   Q.   Is there an email anywhere where the Free

10   Software Foundation made a determination that the

11   Commons Clause added to the Neo4j AGPL was invalid?

12   MR. PERNICK: Objection; asked and answered.

13   THE WITNESS: Yeah, I think I answered. I

14   think what they responded stands on its own.

15   MR. RATINOFF: Can you please read back the

16   question. I'm entitled to an answer. It's actually a

17   different question because he's using the word valid.

18   I'm just using the language.

19   (Record Read.)

20   MR. PERNICK: Objection; asked and answered and

21   vague.

22   THE WITNESS: Yeah, I mean, this is obviously a

23   way of giving a summary that's maybe more plain

24   language. So the Free Software Foundation did not use

25   those exact words, but the answer they did give us

210

1   might have something in another one that he forwarded,

2   I'm not sure. It may have been something that I just

3   heard over the phone too. I heard of a discussion that

4   happened.

5   So of my present knowledge, I'm aware of a

6   discussion that happened within the IRS and that they

7   went through a process and they ultimately determined

8   that they could use ONgDB.

9   Q. How did you learn that?

10   A. I think, like I said, it was either through a

11 series of calls and/or there may have been an email

12 forwarded to some account. I personally learned about

13 it in some way.

14   Q. How did you personally learn it? Was it from

15 John Mark?

16   A. I believe he was one of the individuals that

17 was involved in the discussions. I don't know if it was

18 him that actually forwarded things out or I was talking

19 with on calls. I'm not sure. Maybe I learned of it

20 secondhand through Ben, but I became aware of it.

21   MR. RATINOFF: So then I'm going to go ahead

22 and drop down Tab 53, and this will be Exhibit 34.

23   (WHEREUPON, Exhibit 34 was marked for

24   identification.)

25 BY MR. RATINOFF:

218

1   Q.   I'll just represent this was produced by your

2   counsel. And it's cut off the rest of the trailing

3   email here, but if you look at the -- if you look at the

4   date and timestamp in the words there, do you agree it

5   matches up to the prior Exhibit 33? That would be

6   Tab 51 in your chat.

7   A.   Yeah, this looks like my response to him. Yes.

8   Q.   You have no reason to believe it's not your

9   response to the prior email asking for an additional

10 opinion?

11   A.   No.

12   Q.   And here you state:

13   "ONgDB is currently in use

14   at US Treasury (IRS). Their legal

15   counsel conducted a thorough

16   evaluation of the licensing

17   situation and arrived at the

18   conclusion that Graph Foundation

19   distributions of ONgDB could be used

20   without needing a Neo4j Inc. license."

21   Do you see that?

22   A.   Yes.

23   Q.   So you just said at this time you didn't have

24 any personal knowledge of that opinion, correct?

25   A.   No. I think I said I did, I heard of it.

219

1   Q.   Right, but you never heard directly from the

2   IRS that -- about their conclusion that Graph Foundation

3   distributions of ONgDB could be used without needing a

4   Neo4j Inc. license, correct?

5   A.   I -- no. I mean, I heard the general

6   conclusion that I stated right in here. This is the

7   conclusion that I heard.

8   Q.   But you didn't hear that from the IRS?

9   A.   Sorry. What are you getting at? I mean, I

10   heard it through individuals that were in the

11   conversations.

12   So what are you trying to say, that that's not

13   good enough or --

14   Q.   I'm just asking a question. I don't need to

15   explain what the purpose of my question is.

16   A.   Okay.

17   Q.   Let me ask you the question again.

18   A.   Okay.

19   Q.   Did you directly receive a communication from

20   the IRS expressing that the IRS could use ONgDB without

21   needing a license from Neo4j?

22   A.   I personally do not recall receiving a direct

23   communication from my Graph Foundation email from the

24   IRS.

25   Q.   Okay. I'm not asking about your Graph

220

1   answer without it being couched in a different way. I

2   mean my question is being misstated. I didn't say

3   direct communication, I didn't say email. I said simply

4   personally communicated with. That can mean email,

5   telephone or whatever.

6   MR. PERNICK: We understand the question. Did

7   he have a communication from an IRS person with this

8   information, whether in an email, a cc of an email,

9   anything. The answer right now is he doesn't recall.

10   MR. RATINOFF: Well, I want to hear his answer.

11   I would like to have the question read back and then

12   I'll get his answer, now that you've completely coached

13   him.

14   (Record Read.)

15   THE WITNESS: Based on what I recall, no, I did

16   not directly communicate with them. I believe it came

17   through a forward from or a conversation through some

18   other person that was directly there.

19   MR. RATINOFF: Okay, I'm going to put up the

20   next exhibit. This is Tab 54 which would be Exhibit 35.

21   (WHEREUPON, Exhibit 35 was marked for

22   identification.)

23   BY MR. RATINOFF:

24   Q. Do you see this email? It should end with the

25   email at the top February 19, 2019, 11:57:33 a.m.

226

1   Do you see that?

2   A.   It's coming up. Okay.

3   Q.   So let's go ahead and go down to the second

4 email in this chain. It's on February 19, 2019, at

5 15:04. Do you see that?

6   A.   Okay.

7   Q.   Is it fair to say that this is the direct

8 response to the last email we were discussing,

9 Exhibit 33 -- I'm sorry -- Exhibit 34? Yes?

10   A.   Yes.

11   Q.   And Shahak says:

12   "Aha, any chance I could get

13   a copy of that?"

14   Do you see that?

15   A.   Yes.

16   Q.   Your response is:

17   "It was an internal review so

18   there isn't a document that can be

19   distributed."

20   Do you see that?

21   A.   Yes.

22   Q.   And then is that statement it was an internal

23 review based on your knowledge gained through someone

24 else other than the IRS?

25   A.   More than likely yes. As per what we just said

227

1   before, I think yeah.

2   Q. You said there might be an email, and now that

3   you're saying in this email, Exhibit 35, it was an

4   internal review so there isn't a document that can be

5   distributed. So you never received an actual written

6   evaluation from the IRS, either directly or indirectly,

7   about whether they could use ONgDB without any Neo4j

8   license, correct?

9   A. This statement simply means that the decision

10   that the IRS made, they determined -- they did so

11   internally and those conversations are not intended for

12   public distribution or just generally to be re-sent.

13   Q. And you weren't privy to those conversations

14   with the IRS, correct?

15   A. What do you mean by I was privy to them? I

16   think we've established that I did know these

17   conversations were happening and I understood the

18   outcome.

19   Q. Right. My question is you didn't participate

20   personally in the internal IRS discussions regarding

21   evaluating whether ONgDB could be used without a Neo4j

22   license, correct?

23   A. Correct. I did not participate in the

24   discussions.

25   Q. Okay. Thank you.

228

1   MR. RATINOFF: Let me go ahead and drop the

2   next Tab 44.

3   (WHEREUPON, Exhibit 36 was marked for

4   identification.)

5   BY MR. RATINOFF:

6   Q.   Do you see Tab 44? We'll mark this as

7   Exhibit 36.

8   A.   Before we move on, just for the record, when

9   you say participate, I want to make sure that it's very

10   clear that you meant, like, actively participating in

11   the discussion, not participating in the extent we were

12   just discussing about receiving information that we

13   still need to confirm.

14   Q.   Okay, I'm going to strike that. There's no

15   question pending so the record will say what the record

16   says.

17   THE WITNESS: John, can you make a note that to

18   maybe go back and look at that.

19   MR. PERNICK: Brad, if we need to clarify a

20   question, I can address it or we can address it in

21   review.

22   BY MR. RATINOFF:

23   Q.   So you should be looking at a printout from

24   community.neo4j.com. Do you see what's in front of you?

25   The first Bates number page would be N4J-GFI_00008.

                                                         229

1   Do you see that?

2   A.   I'm sorry. Where are we at?

3   Q.   It should be Tab 44 in the chat.

4   A.   Yes, I have that open.

5   Q.   Do you recognize this document?

6   A.   Not immediately.

7   Q.   Take a second to review it and let me know when

8 you're finished.

9   A.   Okay. Yeah, all right.

10   Q.   You're done looking at it?

11   A.   Yes.

12   Q.   Do you recognize Exhibit 36?

13   A.   Yes.

14   Q.   What is Exhibit 36?

15   A.   I think this is a conversation that is taken

16 from the Neo4j online community site.

17   Q.   And how did you come to learn of this?

18   A.   I think this was shared in the case at some

19 point.

20   MR. RATINOFF: And let me go ahead and mark the

21 next exhibit. It should be Tab 45 coming up on your

22 chat.

23   (WHEREUPON, Exhibit 37 was marked for

24   identification.)

25 BY MR. RATINOFF:

                                                    230

1   Q.   And then I'll mark this as Exhibit 37. This

2   was produced by iGov, and it's got the Bates number

3   IGOV0001570054. And I'll direct you to the top cc line.

4   It says Brad Nussbaum and it's brad@atomrain.com.

5   Do you see that email?

6   A.   Yes.

7   Q.   Do you have any reason to believe you didn't

8   receive this email in your AtomRain account?

9   A.   No.

10   Q.   And if you go ahead and look down at the web

11   address in the bottom email, do you see that?

12   A.   Yes.

13   Q.   And so this -- let's go back to Exhibit -- the

14   prior exhibit here, the Neo4j Desktop versus Neo4j

15   Server. Do you see that?

16   Would you agree, other than the last portion of

17   the web address in the prior exhibit, it's the same

18   address, web address?

19   A.   It appears to be the same.

20   Q.   If you're not comfortable, feel free to click

21   on it.

22   A.   Yes, it looks the same.

23   Q.   So you said it was produced in the case, but do

24   you believe now that you received this -- reviewed this

25   posting on Neo4j's community site via this email?

231

1   A.   I received this email. This would have come

2   into my account. I see Ben responded to it. I'm not

3   sure if this is one I missed. I probably saw it. I

4   don't know, is this something I responded to?

5   Q.   Going back to the Neo4j Desktop versus Neo4j

6   Server, the prior exhibit, do you see where it says "Do

7   the terms of use for 'Neo4j Desktop' apply to the ONgDB

8   server which I downloaded under AGPLv3 license"? Do you

9   see that?

10   A.   Yes.

11   Q.   What -- what do you understand that to mean?

12   A.   I think they're asking whether they can use the

13   Neo4j desktop tool, which is a tool, as I understand it.

14   I think they're trying to figure out if they can use

15   that with ONgDB.

16   Q.   Is there an ONgDB server?

17   A.   ONgDB is a server application.

18   Q.   So there's not -- I'm sorry. Go ahead.

19   A.   Just like Neo4j is a server.

20   Q.   It's not a stand-alone ONgDB server that

21   someone or anyone can use, you actually have to create

22   your own using the software?

23   A.   No, there's a stand-alone server. That's what

24   we distribute. That's the same as the Neo4j server.

25   They're both server technologies.

232

1   Q.   As of November 16, 2018, did Graph Foundation

2   have an ONgDB desktop application?

3   A.   No, Graph Foundation does not have a Neo4j -- a

4   desktop application.

5   Q.   Has Graph Foundation ever tested to see whether

6   the Neo4j desktop application would work with ONgDB?

7   A.   I don't think I have ever tested that, no.

8   Q.   When you say I, you mean Graph Foundation?

9   A.   Yeah, Graph Foundation has not tested that.

10 No, that's not something we support currently.

11   MR. RATINOFF: Okay. Let me go ahead and put

12 the next exhibit up. It should be Exhibit 38. Tab 58

13 is Exhibit 38.

14   (WHEREUPON, Exhibit 38 was marked for

15   identification.)

16 BY MR. RATINOFF:

17   Q.   Let me know when you've had a chance to review

18 Exhibit 38.

19   A.   I've got it.

20   Q.   Do you recognize this printout?

21   A.   Yes.

22   Q.   Is this a tweet that was put out by the Graph

23 Foundation on March 17, 2019?

24   A.   Yes.

25   Q.   Okay. Looking at the tweet here, there's -- it

233

1   says #ONgDB, then in parens it's #FOSS. What does FOSS

2   stand for?

3   A.   Free open source software.

4   Q.   Then there's a #Neo4j Enterprise.

5   A.   Yes.

6   Q.   So are you using that hashtag to refer to the

7   Neo4j's Enterprise Edition?

8   MR. PERNICK: Objection; vague.

9   THE WITNESS: I'm sorry. What? I think we're

10   including hashtags again because there's topics ONgDB

11   free open source software and Neo4j in this tweet.

12   BY MR. RATINOFF:

13   Q.   So you're referring to ONgDB Version 3.5.3 in

14   this tweet?

15   A.   ONgDB 3.5.3. Yeah, it's a support release.

16   Q.   And you're not referring to Neo4j Enterprise

17   3.5.3?

18   A.   Correct.

19   Q.   Why did you use a hashtag in the middle of

20   ONgDB 3.5.3?

21   MR. PERNICK: I'm sorry. Can you repeat that.

22   THE WITNESS: What do you mean in the middle

23   of --

24   BY MR. RATINOFF:

25   Q.   You've got ONgDB -- let me ask the question

                                                        234

1   again.

2   So you see it says ONgDB and there's the parens

3   with Neo4j hashtag and then after the close parens it's

4   3.5.3. Do you see that?

5   A.   Uh-huh.

6   Q.   Why are you referring to Neo4j Enterprise in

7   the middle of ONgDB 3.5.3?

8   A.   To help give people that don't know what ONgDB

9   is an opportunity to learn about it and learn more, to

10   get a quick idea of what it is.

11   Q.   So you're using the Neo4j hashtag to draw

12   attention to ONgDB 3.5.3?

13   MR. PERNICK: Objection; vague; misstates

14   testimony.

15   THE WITNESS: I think what I said is that it's

16   a topic that Neo4j users may be interested in to see

17   that there are -- there are releases coming out

18   consistently of ONgDB. That's how users know that

19   software is being maintained.

20   MR. RATINOFF: That wasn't my question. I'll

21   ask it again. Actually, why don't you go ahead and read

22   it back, please.

23   (Record Read.)

24   MR. PERNICK: Objection; misstates testimony.

25   THE WITNESS: I don't think that's a question.

235

1   BY MR. RATINOFF:

2   Q.   Well, actually, it is, and I'll just ask it

3   again.

4   So are you using Neo4j -- the Neo4j hashtag to

5   draw users to ONgDB 3.5.3?

6   A.   I think the answer I've given applies. We're

7   using the Neo4j hashtag to inform users about ONgDB,

8   Neo4j users that may be interested in understanding that

9   there's a free open-source version that's being

10   maintained and released. That's something generally

11   that people in the open source community want to know.

12   Q.   Could you have referred to Neo4j Enterprise

13   without the hashtag?

14   A.   Is it possible to write a tweet without a

15   hashtag, yes.

16   Q.   That's not my question.

17   Would it have been sufficient to put this tweet

18   out with using Neo4j Enterprise without the hashtag?

19   MR. PERNICK: Objection; vague.

20   THE WITNESS: The Neo4j hashtag is a hashtag

21   that has been used for many years for people in the

22   Neo4j community and around the project to see important

23   things around the project.

24   BY MR. RATINOFF:

25   Q.   You're not directing people to Neo4j, you're

236

1 directing people to ONgDB with the Neo4j hashtag,

2 correct?

3   A.   The Neo4j hashtag is a topic. Neo4j is a topic

4 in this case, so we're directing people that are

5 interested in that topic to ONgDB and the support

6 release.

7   Q.   I'm sorry. Go ahead.

8   A.   No, that was it.

9   Q.   You understand Neo4j is a trademark of Neo4j

10 Inc., correct?

11   A.   I think we've established that I understand now

12 that Neo4j is a trademark, yes.

13   Q.   I think we established you knew that before the

14 lawsuit, too, so let me ask that again.

15   You understood at this time of this tweet that

16 Neo4j was a trademark owned by Neo4j Inc., correct?

17   A.   Yes. Yes, Neo4j is a trademark, yes, of Neo4j

18 Inc.

19   Q.   And you knew that at the time you made this

20 tweet on March 17, 2019, correct?

21   A.   Yes.

22   Q.   And I know you keep changing my question. What

23 do you mean it's a topic of discussion? Neo4j hashtag

24 is a topic of discussion, what do you mean by that?

25   A.   Do you see on the left how it says # Explore?

237

On Twitter's site, you use hashtags to explore topics of

interest. You hashtag something when you want to be

able to find topics of interest. So Neo4j for a long

time has been understood by the community as a topic on

Twitter. People talk about what they're doing in the

community by hashtagging Neo4j in their tweets.

Q. In order for someone to search this topic,

would they tag just Neo4j in the search Twitter window

right here? I'm looking right above where you're

referring to.

A. There are a lot of ways that people can search

Twitter and find information. Tagging is one way that

you can help surface information that's relevant to the

right people, as I understand it.

Q. So would I have to type in #Neo4j to search

Twitter to come up with this tweet?

A. You could just be looking at all -- a lot of

the tweets that are under that hashtag. I don't know

all the ways that Twitter surfaces what you do when

you -- you know, you put a hashtag in something, but it

uses it to help direct people to relevant information.

Q. So if I click on the Neo4j hashtag, is it your

understanding that would just bring up all the tweets

that have Neo4j hashtag in it?

A. I think that's roughly how that works. It

238

1   might be filtered based on preferences and stuff. I

2   don't think it's the exact, like, time list or anything.

3   Q. So if you use Neo4j without the hashtag and

4   someone in another tweet clicked on #Neo4j, it wouldn't

5   necessarily pull up this tweet, right?

6   A. Without doing a hashtag, it would just be a

7   text field.

8   Q. Is there anything in this tweet that

9   differentiates ONgDB from -- I'm sorry, strike that.

10   Is there anything in this tweet that

11   differentiates ONgDB 3.5.3 from Neo4j Enterprise?

12   MR. PERNICK: Object. The document speaks for

13   itself.

14   THE WITNESS: What we've linked here says it's

15   open source. I think it's free open source. I think,

16   you know, it's different and it says ONgDB so it looks

17   to me like it's different. It's talking about ONgDB

18   3.5.3.

19   BY MR. RATINOFF:

20   Q. That's in the link, but in the top here there's

21   nothing that suggests Neo4j Enterprise is a separate

22   product from ONgDB 3.5.3, right?

23   MR. PERNICK: Objection; misstates the

24   document. The document speaks for itself.

25   MR. RATINOFF: He can speak to what the

239

1   document means to him.

2   THE WITNESS: To me, I read the document and it

3   says ONgDB 3.5.3, so I think it's talking about ONgDB

4   3.5.3, and then in parentheses saying this is free

5   open source Neo4j Enterprise. So if you look at other

6   tweets and if you look at the site, you can get an idea

7   more about what's there. Not every tweet is meant to be

8   self-encompassing in every way. If you look at the

9   Graph Foundation Twitter feed in context, you'll see

10   other tweets about changes that have been happening, so

11   this naturally rolls out in that story.

12   MR. RATINOFF: Let me go ahead and mark -- the

13   next exhibit will be Exhibit 39. It will be Tab 60.

14   (WHEREUPON, Exhibit 39 was marked for

15   identification.)

16   BY MR. RATINOFF:

17   Q. Do you have that? Do you have Tab 60 which

18   is -- I'm going to mark as Exhibit 39 in front of you?

19   A. Okay, I see it.

20   Q. So this is a printout from Twitter, a tweet

21   from the Graph Foundation dated May 10, 2019. Do you

22   have any reason to believe this wasn't sent out at that

23   point?

24   A. No.

25   Q. And again, this looks like a very similar tweet

240

1   to the one we just looked at in Exhibit 38. It seems to

2   be referencing just a different version of ONgDB.

3   Is that fair?

4   A. Yes.

5   Q. And so again, you're using a Neo4j hashtag in

6   between words -- or ONgDB and 3.5.4, correct?

7   A. Yes.

8   Q. And why are you using a Neo4j hashtag in this

9   tweet?

10   A. I think this -- so this is just a template for

11   how we send out our releases. Again, support releases

12   are something that shows activity on a project, so this

13   is consistently drawing everybody and bringing awareness

14   that the project is being maintained and developed.

15   Q. Is it fair to say, though, you could have drawn

16   attention to ONgDB without #Neo4j?

17   A. I think the three things that we decided we

18   wanted to try to raise awareness in was ONgDB as our

19   main tag, free open source software as a tag that people

20   look at when they're just looking for FOSS, because it's

21   a thing, and then to everybody in the Neo4j community,

22   so those three things are things that we felt, you know,

23   for people on Twitter we wanted to try to raise

24   awareness to the maintenance of the project and that it

25   existed and that it was being developed.

241

1   Q. So you believe that ONgDB wasn't really readily

2   identifiable at this point as a standalone product?

3   A. I mean, ONgDB has -- you know, like anything,

4   it was -- it's newly created and so you -- you know, you

5   have to let people know that it exists, just like --

6   just like anything so people that are in the community

7   that -- there's a lot of people in the community that

8   didn't -- that may to this day still don't know that

9   they have options and they have choice. You know, it's

10 a sad thing that Neo has never told anybody they have a

11 choice, so we do what we can to try to tell people they

12 have choice and freedom.

13   Q. Although -- strike that.

14   Let me ask this question: So by using a Neo4j

15 hashtag, you were hoping to draw more attention to the

16 ONgDB; is that correct?

17   MR. PERNICK: Objection; vague.

18   THE WITNESS: I think you've asked that before.

19 BY MR. RATINOFF:

20   Q. Different document.

21   A. I think the answer is the same.

22   Q. Okay. Well, let me ask the question again

23 because this is a new document.

24   So it's Exhibit 39. You're using the Neo4j

25 hashtag to draw more attention to ONgDB's new release,

                                                      242

1   correct?

2   A.   I think I've given a description of why we use

3   hashtags. We use hashtags so that people that are

4   looking at that hashtag that are interested in Neo4j can

5   also learn about ONgDB and the support releases that

6   we're making so that they can see an actively maintained

7   project.

8   MR. RATINOFF: Can you read my question back

9   because I don't think that was an answer.

10   (Record Read.)

11   MR. PERNICK: I believe he's answered the

12   question, Jeff.

13   MR. RATINOFF: I'll ask a new question.

14   BY MR. RATINOFF:

15   Q.   So using -- by using the #Neo4j, Graph

16   Foundation's would make it more likely that this tweet

17   would come up under a search for Neo4j, correct?

18   A.   Based on my understanding of Twitter, somebody

19   that is looking for Neo4j directly or has interest in

20   Neo4j through related things would be able to become

21   aware of this tweet by hashtagging it.

22   Q.   Thank you.

23   MR. RATINOFF: The next is Exhibit 61. Tab 61.

24   I apologize. And this will be marked as Exhibit 40.

25   ///

                                                        243

1   (WHEREUPON, Exhibit 40 was marked for

2   identification.)

3   BY MR. RATINOFF:

4   Q.   Let me know when you've had a chance to review

5   it.

6   A.   Okay, I have it.

7   Q.   Do you recognize this document?

8   A.   Yes.

9   Q.   What is it?

10   A.   It's a tweet from the Graph Foundation.

11   Q.   Do you have any reason to believe this isn't an

12 accurate printout of Graph Foundation tweet from

13 October 9, 2019?

14   A.   No.

15   Q.   So looking at this tweet, is it fair to say

16 it's different than the last two we looked at?

17   A.   Yes.

18   Q.   And is it fair to say in the body of the tweet,

19 this one uses the Neo4j hashtag in a different way?

20   A.   Yes.

21   Q.   And how is it different?

22   A.   I mean, hashtags are often used in sentences,

23 so it's used in a different part of a sentence than the

24 previous one.

25   Q.   You're not using the Neo4j hashtag format in

                                                    244

1   ONgDB in 3.5.11, correct?

2   A.   Correct, we did not use this exact same format

3   as the previous ones.

4   Q.   And then below you're saying "What is ONgDB?"

5   Do you see that?

6   A.   Yes.

7   Q.   "Open Native Graph DB is an open source fork of

8   Neo4j," right?

9   A.   Yes.

10   Q.   And that's the main difference in the use of

11   the hashtag?

12   A.   Yeah. It's a completely different tweet.

13   MR. RATINOFF: Okay. I'm going to mark the

14   next exhibit. This is Tab 62. You should get this in

15   your chat here momentarily. This will be Exhibit 41.

16   (WHEREUPON, Exhibit 41 was marked for

17   identification.)

18   MR. RATINOFF: Let me know when you've had a

19   chance to download it.

20   THE WITNESS: I have it.

21   BY MR. RATINOFF:

22   Q.   This is a printout of a tweet dated

23   November 27, 2019, on the Graph Foundation Twitter

24   account. Is that a fair description?

25   A.   Yes.

245

1   Q. Do you have any reason to believe this tweet

2   wasn't sent out by the Graph Foundation on November 27,

3   2019?

4   A. No.

5   Q. And is it fair to say this tweet reverted back

6   to the prior format in Exhibits 38 and 39?

7   A. This appears to be a condensed format that we

8   use.

9   Q. So again, you're using Neo4j hashtag -- I'm

10 sorry -- #Neo4j in the middle of ONgDB 3.5.12?

11 A. In this template, yes.

12 Q. There's no reference to Neo4j -- I'm sorry,

13 strike that.

14   And there's no reference in the top of this

15 tweet stating that ONgDB is a fork in the Neo4j

16 Enterprise, correct?

17   MR. PERNICK: Objection; misstates the

18 document. The document speaks for itself.

19   THE WITNESS: This tweet has what it has.

20 BY MR. RATINOFF:

21 Q. Okay. So it's got the Neo4j hashtag next to

22 the word Enterprise and it's right in the middle of

23 #ONgDB 3.5.12, correct?

24 A. The hashtag is in, yes, in parentheses in

25 between, sure, yes.

246

1   Q.   Again, you're using the hashtag here to allow

2 people to search for Neo4j hashtag to find this tweet,

3 correct?

4   A.   I think it's the same as the other -- it's the

5 same answer as the other ones. This is essentially the

6 same document. I don't know what we answered the other

7 ones. This is no different than the other two. These

8 are all the same template.

9   Q.   Understood. So you're using in this particular

10 tweet the #Neo4j to bring people's attention to ONgDB

11 3.5.12?

12   A.   Yes, we are using -- we are using this tweet to

13 bring awareness to the latest release that -- the

14 support release that came out and including the tags

15 that we have in our condensed version on topics that we

16 want people that are interested to be able to see.

17   MR. RATINOFF: I'm going to mark Exhibit 63

18 [sic]. I'm sorry, it's getting late. I know it's later

19 there for you so thanks for hanging with us.

20   (WHEREUPON, Exhibit 42 was marked for

21   identification.)

22 BY MR. RATINOFF:

23   Q.   And I'll mark this as Exhibit 42. This is a

24 printout of a tweet from the Graph Foundation account

25 dated January 18, 2020.

247

1   Do you have any reason to believe this isn't a

2   correct copy of the tweet that was issued by the Graph

3   Foundation on this date?

4   A.   No.

5   MR. RATINOFF: I'm sorry. Denise, did you get

6   that?

7   THE REPORTER: I did.

8   BY MR. RATINOFF:

9   Q.   And this is again following the same format as

10   the prior Exhibit 41 that we just discussed, correct?

11   A.   Yes.

12   Q.   And again, the #Neo4j has been inserted between

13   ONgDB and 3.5.14?

14   A.   Yes.

15   Q.   And the reason why you're using the hashtag

16   Neo4j is to get those who are interested in Neo4j to

17   find ONgDB?

18   A.   I'm sorry. Can you repeat this? What was it?

19   MR. RATINOFF: Can you read the question back,

20   please.

21   (Record Read.)

22   THE WITNESS: I don't know if that's exactly

23   how I said it, but I mean, that's -- that's roughly

24   right. We want to enable -- we want to make aware -- we

25   want to enable Neo4j users to become aware that there is

                                                        248

1   another option that's open source and that is

2   maintained.

3   MR. PERNICK: Jeff, can we take a quick break.

4   MR. RATINOFF: Yeah, let me just do one more

5   document and then I think I want to have a quick

6   discussion off the record. I'm kind of at a stopping

7   point not necessarily for the day, but --

8   MR. PERNICK: Okay.

9   MR. RATINOFF: Then this is Exhibit -- I'm

10   sorry -- Tab 64, which you'll get momentarily, which

11   I'll mark as Exhibit 43. Let me know when you've had a

12   chance to review it.

13   (WHEREUPON, Exhibit 43 was marked for

14   identification.)

15   BY MR. RATINOFF:

16   Q. And this is a tweet from May 19, 2020, from a

17   Graph Foundation Twitter account. Do you have any

18   reason to believe this isn't an accurate and correct

19   printout of this tweet?

20   A. No.

21   Q. And in this particular tweet I note there's a

22   Neo4j hashtag which is in a different format than the

23   last one, correct?

24   A. Correct.

25   Q. And the Neo4j hashtag here is just by itself,

249

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 1                    COURT REPORTER'S CERTIFICATE

 2

 3            I, DENISE MYERS BYRD, CA CSR 8340, RPR, the officer

 4   before whom the foregoing proceeding was conducted, do hereby

 5   certify that the witness whose testimony appears in the

 6   foregoing proceeding was duly sworn by me; that the testimony

 7   of said witness was taken down by me in stenotype to the best

 8   of my ability and thereafter transcribed under my supervision;

 9   and that the foregoing pages, inclusive, constitute a true and

10   accurate transcription of the testimony of the witness.

11            Before completion of the deposition, review of the

12   transcript [X] was [ ] was not requested.  If requested, any

13   changes made by the deponent (and provided to the reporter)

14   during the period allowed are appended hereto.

15            I further certify that I am neither counsel for,

16   related to, nor employed by any of the parties to this action,

17   and further, that I am not a relative or employee of any

18   attorney or counsel employed by the parties thereof, nor

19   financially or otherwise interested in the outcome of said

20   action.  Signed this 9th day of October 2020.

21

22

23

                             Denise Myers Byrd

24                           CSR 8340, RPR, CLR 102409-02

25
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253

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NEO4J, INC., a Delaware
corporation; and NEO4J SWEDEN
AB, a Swedish corporation,

        Plaintiffs,

vs.   CASE NO.
                                       5:19-cv-06226-EJD

GRAPH FOUNDATION, INC., an
Ohio corporation; GRAPHGRID,
INC., an Ohio corporation;
and ATOMRAIN, INC., a Nevada
corporation,

        Defendants.
_____/

REMOTE VIDEOTAPED DEPOSITION OF
BRAD NUSSBAUM
as representative of GRAPH FOUNDATION, INC.
pursuant to Federal Rule of Civil Procedure 30(b)(6)

VOLUME II

DATE: November 9, 2020

TIME: 10:03 a.m.

LOCATION: via videoconference

REPORTED BY: BENJAMIN GERALD
               California CSR No. 14203
               Washington CSR No. 3468

256

1   Q. Okay. So similar question: One of the things

2   that you had said you would check into after your last

3   deposition is whether there were any other

4   communications by you with other customers besides

5   Next Century regarding the Free Software Foundation's

6   alleged determination that the Commons Clause was an

7   improper addition to the AGPL.

8   Do you recall that?

9   A. I didn't recall anything about looking for

10   other customers, though I don't believe that there -- I

11   mean, I'm not sure what even you mean by "customers,"

12   but I don't -- I don't think from the Foundation's

13   standpoint there were other organizations that we -- we

14   talked to about this.

15   What I recall from our past conversation was

16   looking into what information we received in dialog from

17   the IRS about the AGPL.

18   Q. Okay. But you didn't go and look to see

19   whether there was any other communications about the IRS

20   opinion?

21   MR. PERNICK: You mean the IRS now, or the Free

22   Software Foundation?

23   MR. RATINOFF: Well, he just mentioned IRS, so

24   I'm --

25   MR. PERNICK: Okay. I just wanted to make

266

 1   sure.

 2   THE WITNESS: Yeah. From our last

 3   conversation, I -- I did discuss with Ben, because he

 4   was the one involved, how the conversations occurred

 5   within the IRS.

 6   BY MR. RATINOFF:

 7   Q. And what did you learn?

 8   A. I learned that there was one call that he was

 9   on where the IRS lawyers asked him some questions,

10   mostly a conversation with John Mark, and I think he got

11   asked maybe -- or he answered maybe one question, he had

12   said. Yeah.

13   Q. When did that call --

14   A. It was also not --

15   Q. Sorry. Go ahead.

16   A. It was also not a conversation that was under

17   any capacity as the Foundation at that time. He had

18   said that the conversation was because we were --

19   because AtomRain was doing consulting work inside of the

20   IRS.

21   Q. Okay. Do you know when that conversation

22   occurred?

23   A. I don't. It was by phone, and I think Ben said

24   he took it from a tree stand while he was hunting

25   sometime in the fall, so...

267

1   Q.   Good way to scare away the deer.

2   A.   I don't know how he does it. He manages to

3   pull it off somehow.

4   Q.   Good stuff. Okay.

5   You said IRS counsel; do you recall, or did Ben

6   tell you who from the IRS was on that call?

7   A.   No, he didn't mention any names.

8   Q.   And you said John -- there was a conversation

9   with John Mark; are you referring to the same telephone

10   call with the IRS?

11   A.   Yeah. John Mark was -- I think he had

12   organized the call because he was leading those

13   discussions there.

14   Q.   Okay. But -- but Ben was not attending that

15   call on behalf of Graph Foundation, correct?

16   A.   No. He was attending it because of the work

17   done through AtomRain.

18   Q.   And did Ben tell you when the IRS conveyed on

19   that call?

20   A.   They didn't convey anything. They asked

21   questions. There were no conclusions that were stated

22   on that particular call. It was more of a fact-finding

23   call or just information gathering. And then they

24   ultimately, you know, made their -- their decisions and

25   their -- their decisions afterwards.

268

1   Q.   Okay. But you weren't privy to -- strike that.

2   Graph Foundation wasn't privy to those

3   decisions made by the IRS, correct?

4   A.   We learned about the decisions, you know,

5   following that call and the eventual use of ONgDB by the

6   IRS. So the Graph Foundation found out about it because

7   of our relationship with AtomRain.

8   Q.   Okay. And what did Graph Foundation find out?

9   A.   That the IRS decided to move forward with using

10 ONgDB, and they accepted their use was under AGPL.

11   Q.   Graph Foundation was never privy to the actual

12 internal deliberations of the IRS, correct?

13   A.   What does it mean to be "privy to the internal

14 deliberations"?

15   Q.   Did Graph Foundation have any inside

16 information -- sorry. Strike that.

17   Graph Foundation didn't have any insight into

18 the IRS' deliberative process on whether they could use

19 ONgDB under the AGPL, correct?

20   A.   Correct. They -- they conducted whatever

21 internal process that they did with their legal counsel

22 and came to their conclusions.

23   Q.   Okay. And then going back to the original

24 question on this Exhibit 32, was there any other

25 communications that you were able to locate from Graph

269

1   apparently, it wasn't. Okay.

2   So this will be Tab 40, and we'll go ahead and

3   mark this as Exhibit 45.

4   (Exhibit 45 was marked for identification.)

5   BY MR. RATINOFF:

6   Q. Let me know when you have a chance to open this

7   and take a look at it.

8   A. Yup. I've got it.

9   Q. Okay. So this is a printout, you can see down

10   at the -- the gutter, from Graph Foundation's website on

11   October 13, 2020.

12   Do you see that?

13   A. Yes.

14   Q. Okay. And do you have any reason to believe

15   this printout is -- is not a true and accurate

16   representation of this page on Graph Foundation's

17   website as of that date?

18   A. No.

19   Q. Okay. ONgDB 3.5.19, is that the last 3.5

20   version that Graph Foundation published?

21   A. I think it might be the latest one on the

22   site --

23   Q. And --

24   A. -- as of today.

25   Q. And was there, to your knowledge, a Neo4j

1   Enterprise 3.5.19, as well?

2   A.   Yes.

3   Q.   Okay. So I am going to go ahead and share this

4   now. So I want to cover a couple of things on it and

5   make sure this gets captured. You can keep looking -- I

6   think this is going to pull up on your screen over

7   your -- what you're looking at, so I want you to refer

8   to the screen share. All right. You should be able to

9   see -- should -- you should see Exhibit 45 on my screen

10   as I scroll.

11   Do you see that?

12   A.   Uh-huh.

13   Q.   Okay. So I'm going to go ahead and hover over

14   this docs, HTML link; do you see that?

15   A.   Yes.

16   Q.   And that leads to

17   github.com/graphfoundation/ongdb/wiki/ongdb-3.5-docs.

18   Do you see that?

19   A.   Yes.

20   Q.   I'm going to go ahead and click on that. It's

21   going to bring up my browser. I'm going to have to

22   switch over. Give me one second here to switch over.

23   Okay. You should now be looking at the target

24   site, which should be

25   github.com/graphfoundation/ongdb/wiki.

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1   Do you see that?

2   A. Yes.

3   Q. All right. I've overcome that technological

4 challenge. Now I'm going to go ahead and click on the

5 number one line here, "ONgDB Docs." I'm going to go

6 ahead and click on that, and we're going to go to what

7 appears to be a web page with the title "Docs." The

8 address is github.com/graphfoundation/ongdb/wiki/docs.

9   Do you see that?

10   A. Yes.

11   Q. Okay. And this is -- sorry. Strike that.

12   What are we looking at now?

13   A. A wiki page for finding docs for ONgDB.

14   Q. Is this essentially a document repository on

15 Graph Foundation's GitHub repository?

16   A. It's a wiki page with a location to find docs

17 for ONgDB.

18   Q. All right. So I'm going to go ahead and click

19 on this link under -- it says "LTS release."

20   Do you see that?

21   A. Yes.

22   Q. And then underneath it's a hyperlink, which

23 doesn't bring up what it is, but it's ONgDB 3.5.

24   A. Yes.

25   Q. I'm going to go ahead and click on that.

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1   And can you tell me what we just went to after

2   clicking that hyperlink?

3   A.   The site title is called "Neo4j Operations

4   Manual v3.5."

5   MR. RATINOFF: And that -- for the record,

6   that's -- the web address we just went to is

7   neo4j.com/docs/operations-manual/3.5/, correct?

8   THE WITNESS: Yes.

9   BY MR. RATINOFF:

10   Q.   So we're not looking at the

11   Graph-Foundation-generated document, correct?

12   A.   Correct.

13   Q.   This -- this wasn't an operations manual that

14   Graph Foundation created, correct?

15   A.   Correct.

16   Q.   And do you recall, at our last deposition, we

17   were talking about the Creative Commons license?

18   A.   Vaguely, yes.

19   Q.   And what's your understanding of the Creative

20   Commons license?

21   A.   I'm not sure I have a very thorough one.

22   Q.   Do you recall we had a discussion about

23   commercial restrictions in the Creative Commons license?

24   A.   I remember -- I remember you mentioned it, yes.

25   Q.   Well, let me just ask you this: What's your

1   that.

2   Let me go ahead and go back to -- we're going

3   to go back to the

4   github.com/graphfoundation/ongdb/wiki/docs. I'm just

5   going to go ahead and go down to where it says "Older

6   Releases."

7   Do you see that?

8   A. Yes.

9   Q. I'm going to go ahead and click on that. And

10   if you see that link I clicked took us to

11   neo4j.com/docs/operations manual -- I'm sorry. Let me

12   re-read that.

13   neo4j.com/docs/operations-manual/3.4/.

14   Do you see that?

15   A. Yes.

16   Q. And what is at that URL address?

17   A. What is the URL address?

18   Q. What -- what did the URL address take us to?

19   A. The Neo4j operations manual 3.4.

20   Q. And do you see where it says, "This is the

21   operations manual for Neo4j version 3.4, authored by the

22   Neo4j team"?

23   A. Yes, I see that.

24   Q. So this manual was authored by Neo4j, correct?

25   A. As stated by the site.

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1   Q.   Sorry. Graph Foundation didn't author an

2   operations manual for ONgDB version 3.4, correct?

3   A.   Based on how we established authoring last

4   time, yes, that's correct.

5   Q.   And then you'll see there's a link here again

6   to the Creative Commons 4.0.

7   Do you see that?

8   A.   Yes.

9   Q.   And we'll go to that license again. It takes

10   us back to neo4j.com/docs/license/.

11   Do you see that?

12   A.   Yes.

13   Q.   Okay. And can we agree this is the same

14   license we were just looking at?

15   A.   Yes.

16   Q.   And then under "non-commercial," it says, "You

17   may not use the material for commercial purposes"?

18   A.   Yes.

19   Q.   Okay. Just give me one second here. I'll go

20   ahead and stop sharing.

21   MR. RATINOFF: I'm just going to go ahead and

22   drop a new exhibit in. I just wanted to make sure we

23   have an exhibit to mark for the Creative Commons

24   license. So let me know when you see what should be

25   Tab 91.1.

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1   THE VIDEOGRAPHER: And this would be

2   Exhibit 46?

3   MR. RATINOFF: Correct. So I'd like to mark

4   this as Exhibit 46.

5   (Exhibit 46 was marked for identification.)

6   BY MR. RATINOFF:

7   Q. Let me know when you have that in front of you.

8   Mr. Nussbaum? Are you able to look at --

9   A. I have it.

10   Q. Okay. Thank you. All right.

11   Can you go ahead and look at this and look at

12 the bottom in the gutter there? It's -- this is a web

13 archive capture. You can see the dates 2019-08-2018.

14   Do you see that? I'm sorry. Strike that?

15   It's 2019-08-20; do you see that?

16   A. Yes.

17   Q. I'll represent to you this was printed out from

18 the web archive, and this is a capture that was on

19 August 20, 2019, from -- which I believe is the same

20 page we were looking at, neo4j.com/docs/license.

21   Do you see that?

22   A. Yes.

23   MR. PERNICK: Objection.

24   Okay. I didn't understand that question, but

25 Brad, if you did, that's fine.

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1   THE WITNESS: I think he was just saying it's

2   from the Neo4j site as of that date.

3   MR. PERNICK: Okay. Got it.

4   THE WITNESS: Did I understand it wrong?

5   BY MR. RATINOFF:

6   Q. No, I think -- I think you got it.

7   MR. PERNICK: All right. Thank you.

8   BY MR. RATINOFF:

9   Q. Can we agree that this is the same license we

10   were just looking at live on Neo4j's website?

11   MR. PERNICK: I'm going to object to the extent

12   you're asking him to review it word for word, but he can

13   give you his understanding without having a

14   word-for-word comparison.

15   THE WITNESS: I generally see the same

16   structure and content, the same sections.

17   BY MR. RATINOFF:

18   Q. So I'm going to try to narrow down -- you

19   mentioned that you had spoken to counsel about this

20   license, and I'm not asking about those communications,

21   but was it prior to August 2019 that you had

22   conversations with counsel regarding the Creative

23   Commons license?

24   A. Any conversations we had would have gone back

25   to the formation, prior to formation when we reviewed

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1   the AGPL Commons and the like. So I guess that would

2   have put conversations at April/May of 2018.

3   Q. So if you had any conversations about the Neo4j

4   Creative Commons license, it would have been around the

5   time of Graph Foundation's formation in June of 2018; is

6   that correct?

7   A. I mean, that may not have been the only time.

8   That's certainly the time that we were talking about,

9   you know, the validity of the licenses that were at

10   play. Again, I don't recall this one getting much

11   focus. I don't think the way that we were using it was

12   deemed to apply to the material as this license states,

13   so I don't think it was applicable.

14   Q. And you had mentioned -- I think we talked

15   about this last time, about the applicability of the

16   Commons Clause.

17   Are you relying on a formal opinion of counsel

18   to support your position that removal of the Commons

19   Clause from Neo4j's AGPL was appropriate?

20   MR. PERNICK: Objection. Jeff, are you asking

21   whether we're asserting an advice-of-counsel defense?

22   MR. RATINOFF: Yeah, I am.

23   MR. PERNICK: So we have not asserted an

24   advice-of-counsel defense.

25   MR. RATINOFF: Okay.

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1   CERTIFICATE

2   I, BENJAMIN GERALD, Certified Shorthand Reporter,

3   Certificate No. 14203, for the State of California do

4   hereby certify:

5   That prior to being examined, the witness named in

6   the foregoing deposition was by me duly sworn to testify

7   to the truth, the whole truth, and nothing but the truth

8   in the within-entitled cause;

9   That said deposition was taken shorthand at the

10   time and place herein named;

11   That the deposition is a true record of the

12   witness's testimony as reported to the best of my

13   ability by me, and was thereafter transcribed to

14   typewriting by computer under my direction;

15   That request [X] was [ ] was not made to read and

16   correct said deposition.

17   I further certify that I am not interested in

18   the outcome of said action, nor am I connected with, nor

19   related to any of the parties in said action, nor to

20   their respective counsel.

21   Witness my hand this 11th day of October, 2020.

22

23   _____

24   BENJAMIN GERALD, CSR No. 14203

          STATE OF CALIFORNIA

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